

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 02:56 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX
VOLUME 7

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EXHIBIT “2”

NOVEMBER 7, 2019

RUSSO V. COX COMMUNICATIONS

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1 CASE NO. A-17-753606-C

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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SIMONE RUSSO,

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Plaintiff,

)

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vs.

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COX COMMUNICATIONS LAS VEGAS,

)

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Defendant.

)

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REPORTER'S TRANSCRIPT
OF
HEARING

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BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

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DISTRICT COURT JUDGE

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DATED THURSDAY, NOVEMBER 7, 2019

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

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NOVEMBER 7, 2019

RUSSO V. COX COMMUNICATIONS

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NOVEMBER 7, 2019

RUSSO V. COX COMMUNICATIONS

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RUSSO V. COX COMMUNICATIONS

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1 LAS VEGAS, NEVADA; THURSDAY NOVEMBER 7, 2019

2 12:01 P.M.

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

4 * * * * *

5
6 MR. SAMPSON: This is David Sampson.

7 THE COURT: All right. Mr. Sampson, good
8 morning.

9 MR. SAMPSON: Good morning.

10 THE COURT: And...

11 MR. LEMKUL: Good morning, your Honor. Judge,
12 Will Lemkul here.

13 THE COURT: All right. Good morning. And I
14 see we have plaintiff's motion to compel settlement on
15 an order shortening time.

16 MR. SAMPSON: Yes, Judge, thank you. So we
17 were -- the Court is, I'm sure -- well remembers this
18 case. We were in front of your Honor three weeks ago
19 now on Wednesday initially. And we put the settlement
20 on the record and the terms of the settlement on the
21 record. We came back on Friday, found out that the two
22 other -- two other defendants who on Wednesday said
23 they hadn't gotten any confirmation from their client
24 yet because it had just kind of happened and that whole
25 thing. They wanted to check with their clients, call

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12:01:56 1 back on Friday, and confirmed their client did agree to
2 do the settlement. And so under those terms -- a
3 couple of the terms, one was that --

4 (Reporter clarification)

12:02:06 5 MR. SAMPSON: Two of the defendants who were
6 named in the case who have never filed answers, who
7 have been defaulted were not affected by the
8 settlement, with the money that was being paid.

9 THE COURT: And...

12:02:17 10 MR. SAMPSON: And my clients rights --

11 THE COURT: And Mr. Sampson, I don't want to
12 cut you off. But please identify the two defaulted
13 defendants again for the record.

14 MR. SAMPSON: Duslak and Sesman are the last
15 names.

16 THE COURT: Thank you, sir. You may continue.

17 MR. SAMPSON: So then Dr. Russo's rights
18 against those two defaulted individuals would not be
19 affected at all. Everyone agreed. And then the
12:02:41 20 comment was made that the provisions of the settlement
21 would be reduced to a writing and released. Then we
22 would sign off on. And the money would be paid to my
23 client within two weeks of the release being signed.

24 So I raised two issues when the release was
12:02:58 25 brought up. I said, number one, we agreed there is

12:03:01 1 going to be nothing in the release that's not agreed to
2 on the record today. There's not going to be any new
3 terms or new anything going on. And it's going to
4 comport with -- the release will comport with what
12:03:11 5 we've agreed to on the record today. Everyone agreed
6 that was the case. No problem. Not an issue.

7 The next thing I say is this idea that the
8 money will be paid within two weeks of release being
9 signed. I then said, well, I don't want the release to
12:03:27 10 take, you know, two weeks to get to me and then two
11 more weeks before you sign it. And so a month out and
12 we still don't have our money.

13 And the comments from the defense were, of
14 course, we'd never do that. Mr. Sampson, don't be
12:03:40 15 ridiculous. Why you got to always assume the worse,
16 that whole thing.

17 Yet here we sit three weeks later now. We're
18 three weeks and a day from Wednesday, and tomorrow is
19 two weeks from the Friday, and I don't have a release
12:03:53 20 that I can have my client sign to get the money. I did
21 get -- which we resolved it on Friday, I want to say
22 the 18th, on Monday, Mr. Fink sent an email over, and
23 he said here is the release that he had typed up. He
24 made no bones about it. Sunrise does not agree and has
12:04:11 25 not authorized this to be a release we can use in the

12:04:14 1 case.

2 And if we stand here today, we still don't
3 have anything from Sunrise that agrees we can use to
4 resolve the case.

12:04:21 5 I sent out some changes to what Mr. Fink
6 provided and asked for comment. I did get word from
7 Mr. Bushbaker's counsel, Mr. Meloro, to have some
8 rather insignificant changes we needed to make that
9 didn't affect any substance. I incorporated those
12:04:38 10 changes. And asked Cox, IES, Sunrise, anybody for
11 Mr. Scarcelli, anybody else have comments. I heard
12 nothing until the following Monday.

13 So on the following Monday I said, all right,
14 it's been a week that Mr. Fink provided this. And I
12:04:54 15 sent back my changes. I've heard nothing from anybody.
16 So I assume what I sent back was going to work and have
17 my client sign it. He expected his money in two weeks.

18 And then all of a sudden within like 15
19 minutes, I heard from Mr. Fink, oh, no, Sunrise hasn't
12:05:09 20 agreed yet. We told you we don't agree. We don't --
21 I'll pass it by to take a look at. Cox sent back word
22 very quickly from Mr. Turtzo, Oh, no, Cox hasn't
23 agreed. And I essentially wrote back and said, Well,
24 then get your clients to agree. I mean, what's he --
12:05:23 25 let me know what changes you have because it's -- I've

12:05:25 1 waited a week very patiently. I don't want this to
2 stall out. Because my client's losing patience. We
3 don't have anything for him to authorize.

4 We need to get this taken care of. I
12:05:36 5 ultimately did get comments from Cox, and we've
6 incorporated the changes they want. My understanding,
7 although Mr. Meloro would have to address this, my
8 understanding from the communications I received from
9 Mr. Meloro because he sent something a week ago Tuesday
12:05:52 10 saying, is this that Mr. Sampson sent out something we
11 can have my client sign and conclude. So I don't think
12 there is any additional issues.

13 I've not heard from Scarcelli's counsel other
14 than it was a side question about renters insurance,
12:06:05 15 and there isn't any. So I think, but I've not heard
16 conclusively, that Mr. Scarcelli is on board with what
17 I sent over.

18 But Sunrise now, between a week ago Tuesday
19 and Thursday, Mr. Fink and I were sending things back
12:06:23 20 and forth. What we're looking at is, again, we want to
21 preserve all rights against the defaulted defendants,
22 just like we said on the record. And the release that
23 was provided defines Sunrise as all employees,
24 independent contractors. It lays out other things that
12:06:40 25 could potentially include Duslak and Sesman.

12:06:44 1 So I included in there that we are not going
2 to include them specifically or anyone affiliated with
3 them. And I think, as I understand it, Sunrise no
4 longer agrees. So as of last Thursday, Halloween, was
12:06:57 5 my last conversation with Mr. Fink until yesterday.
6 And I've been calling every day since then trying to
7 work all this out. I got no response at all.

8 And so I did, when I didn't get it worked out
9 on Halloween, filed this motion. Let's get it in front
12:07:12 10 of the judge. It's been -- it's been silence since
11 then until yesterday. And even yesterday Mr. Fink on
12 the phone as we were talking sounded like maybe we
13 could work something out, but he sent over some
14 proposed language even this morning that, again, says
12:07:27 15 Seslak and Dusman [sic] are to be dismissed if it turns
16 out they're employees, for example, of Sunrise. Which
17 we -- so I sent something over yesterday. And I'll
18 just read it to the Court.

19 My email says: "It appears what I sent
12:07:44 20 earlier --" Well, I sent something over. I'm sorry.
21 I sent something over where I proposed since we haven't
22 got an agreement yet -- the problem was the first one I
23 sent over was red lined. So I said, it was so
24 ridiculously red lined that it looks like the actual
12:07:58 25 language I proposed didn't go through. But here is

12:08:01 1 what I propose our release should say.

2 Settlement release agreement. And it
3 identifies each party by name. Dr. Russo, Sunrise,
4 IES, Cox, PWJames, Kevin Bushbaker, Chris Scarcelli
12:08:16 5 hereby agree to settle the disputes between them and
6 release each other pursuant to the terms set forth on
7 the record on October 16 and October 18, 2019, in case
8 number, and I laid the case number out, pending in the
9 Eighth Judicial District, Clark County, Nevada, which
12:08:34 10 terms are incorporated herein by this reference.

11 And everybody signed it. And says it seems to
12 me to be the best way if, as we agreed, the release
13 isn't -- isn't any different than what was confirmed on
14 the record, all rights are going to be given in the
12:08:49 15 release nor taken away from the release than what was
16 confirmed on the record. This is really the only way
17 to do it.

18 And I have gotten a response I think from Cox
19 that they're not agreeable. I assume given I was given
12:09:02 20 the proposed changes from Mr. Fink perhaps they're not
21 agreeable either. But, you know, we really don't need
22 a release because, as your Honor pointed out a couple
23 times in voir dire, this case is pending a long time.
24 Happened back in October of 2016. And there is no
12:09:20 25 statute of limitations long run at this point in time.

12:09:22 1 So there really is no reason for a release. I
2 have no problem putting one -- or signing off on one as
3 long as it does two things:

4 One, doesn't delay my client getting his money
12:09:34 5 which now, it has;

6 And two, strictly comports with what was
7 placed on the record which the release I've now just
8 read into the record absolutely would do.

9 And if that are not agreeable, then I don't
12:09:46 10 know. I would ask the Court either enforce the
11 settlement and say, you know, since there was radio
12 silence regarding the release, I'm not going to require
13 one anymore. Or I will require one, but it's just
14 going to say what Mr. Sampson pointed out that you're
12:10:00 15 settling the case pursuant to the terms that were
16 placed on the record.

17 I've also given -- suggested a third option
18 that I'll now suggest to the Court that perhaps we just
19 print up the record, both days, and all the parties
12:10:13 20 sign it. And go, so agreed. And we're all released
21 pursuant to what this document says.

22 But what I don't want to do is keep spinning
23 my wheels with the parties with the defendants that's,
24 number one, going to delay my client getting his money.
12:10:27 25 And number two, potentially would add or takeaway from

12:10:31 1 the rights and claims that the parties agreed with not
2 be released or otherwise affected when we put this all
3 on the record.

4 So I'm just reaching out to the Court. I do
12:10:43 5 understand that the check from Sunrise is now in
6 Las Vegas. I understand the Cox one is either here or
7 should be here shortly. So I want to get my client his
8 money as we agreed to three weeks ago. I want to put
9 this thing to bed without waiving any rights other than
12:10:59 10 those that were specifically put on the record. So I
11 would ask for instruction or direction from the Court
12 on how we can best do that, please.

13 THE COURT: Okay. Thank you, sir.

14 MR. CLARK: If it please the Court, David
12:11:13 15 Clark for Chris Scarcelli. Mr. Sampson is right. We
16 did have a side issue on the additional insured
17 provision of the lease agreement.

18 Last week we got communications from
19 Mr. Sampson on that issue. And I can now say that my
12:11:29 20 client is going to go forward and just sign off on a
21 complete release and settlement.

22 THE COURT: Okay.

23 MR. CLARK: And if that's -- so I'm not really
24 involved in the other issues. I don't think my client
12:11:39 25 is going to pay me for this appearance now. But if it

12:11:42 1 please the Court, I have another appearance I need to
2 make. So if I'm not needed, and I don't know if
3 Mr. Sampson still needs me, but Mr. Scarcelli says
4 he'll just sign it when it's in final form.

12:11:56 5 THE COURT: I understand. And we don't need
6 you, sir, I don't think.

7 MR. CLARK: Okay. I'll take my leave now.
8 Thank you all.

9 MR. FINK: Your Honor, Leonard Fink for
12:12:03 10 Sunrise.

11 Mr. Sampson's recitation of what happened
12 since the Friday when we put the settlement on the
13 record is mostly correct. I want to throw in a few
14 things that I think are important here.

12:12:18 15 Number one is that I got everybody the
16 release, the proposed. And we said although we were
17 putting this on the record it was very clear that we
18 were going to be putting together an actual settlement
19 agreement.

12:12:32 20 I don't remember if that part was on the
21 record. I think it was. Mr. Lemkul might remember
22 that differently, but I do.

23 However, I did that Sunday night. And if
24 anybody knows me, the fact that I actually did it that
12:12:43 25 quickly shows that I was trying to be a person of my

12:12:46 1 word and get this done for Mr. Sampson. Especially
2 because I knew that his client -- that he was having
3 issues with that.

4 So I got that done. I sent it out either
12:12:55 5 Sunday night or early Monday morning. I did in the
6 email say my client had not yet agreed to the terms.
7 The reason is that I had a case with then Judge Bayliss
8 where a plaintiff went in to enforce the settlement
9 that was based upon terms that were negotiated between
12:13:09 10 counsel. And the reason the court enforced the
11 settlement, even though my client had not agreed to it,
12 was because counsel had agreed to it and he thought
13 that that was good enough.

14 So since that time, I made sure that unless my
12:13:21 15 client has absolutely signed off on it, every email
16 that goes out when we're talking about settlement
17 agreements, make sure it's clear. My client has not
18 yet agreed to these terms. I didn't think it would be
19 a problem, but I wanted to make sure everybody
12:13:33 20 understood that.

21 So I sent that out again either Sunday night
22 or early Monday morning waiting to hear back from
23 people as to what changes they were going to want, so
24 that we can get a final agreement, so then we can get
12:13:43 25 our respective clients to sign off on it.

12:13:46 1 And I don't recall, and I think Mr. Sampson is
2 probably correct. I think the next thing we probably
3 heard was maybe that next Friday. And then there was
4 some back and forth up until Thursday which was the
12:13:56 5 October 31, which is Halloween.

6 I got sick on Thursday, Friday. Then I had a
7 deposition on Monday which is why I never responded to
8 Mr. Sampson's phone calls. Again, I explained that to
9 him when I talked to him. So I wasn't shining him on
12:14:09 10 or anything like that. I just literally got sick and
11 wasn't do anything.

12 So we resumed trying to get this done. The
13 hold up, and Mr. Sampson I think said it but I'll say
14 it again, I think the real hold up right now is whether
12:14:24 15 or not the release that we negotiated was intended to
16 cover Mr. Sesman and Duslak, D-U-S-L-A-K, I think.
17 Actually, I've got it in front of me. Okay. Duslak,
18 D-U-S-L-A-K, and Sesman, S-E-S-M-A-N, if they were
19 considered employees of Sunrise.

12:14:43 20 There's never been one bit of evidence in this
21 case that they were employees. It was always that they
22 were independent contractors. But as I'm sure the
23 Court has dealt with thousands of settlements, when you
24 settle with an entity, you are settling with the
12:14:57 25 employees too.

12:14:58 1 There's nothing in Mr. Sampson's amended
2 complaint that even suggests or asserts that either one
3 of these gentlemen is an employee. There is nothing in
4 any one of his disclosures that asserts they're
12:15:09 5 employees.

6 So the idea here is that not only is Sunrise
7 getting itself out of the case, but it's also getting
8 out its employees, which also includes board members.
9 Although, we didn't specifically say that on the record
12:15:22 10 either, but also Cox, IES, they're also getting their
11 employees out.

12 In fact, the gentleman Curtis, I think
13 was always the name that came up. But, again, that
14 wasn't specifically on the record. So I think it's an
12:15:34 15 understood term. When you're getting an entity out
16 that includes their employees. If somebody is saying
17 that somebody acted within the course and scope of
18 their employment, unless you're saying they weren't
19 acting within the course and scope of employment,
12:15:45 20 which, again, wasn't an issue in the case because it
21 was never made an issue in the case.

22 So to the extent this is what we were trying
23 to do with the settlement agreement, and Mr. Sampson is
24 right, I did throw in independent contractors in the --
12:15:55 25 in one of the versions of the draft. But as of this

12:15:59 1 morning, I sent out something that I intended to send
2 out before the hearing and realized when I was talking
3 to Mr. Clark when I got here that I didn't press send
4 on my computer. So I think I sent it out maybe 9:15,
12:16:10 5 maybe 9:30 this morning.

6 So I think that the only hang up is whether or
7 not this settlement includes Mr. Duslak and Mr. Sesman
8 if they are found to be employees of Sunrise. And I
9 think that's it.

12:16:23 10 If they're not and they're independent
11 contractors, then the settlement agreement absolutely
12 does not cover them. Would allow Mr. Sampson to do
13 what he needs to do. And even try to go after my
14 client's insurance carriers to see if there is coverage
12:16:38 15 for them as independent contractors. We all agree
16 that -- that was one of the things that was important
17 to him. We aren't seeking to release that.

18 But to the extent they're employees, this
19 should cover it. And I think, I think that's really
12:16:48 20 where we are, Judge. And, of course, I'd certainly
21 leave it up to Mr. Bushbaker's counsel -- I think I
22 always stumble on your name -- sorry, Joe -- and
23 Mr. Lemkul for anything else.

24 THE COURT: Okay. Anything you want to add?

12:17:01 25 MR. MELORO: Joseph Meloro on behalf of Kevin

12:17:04 1 Bushbaker. Your Honor, Mr. Fink did prepare a release
2 agreement that Sunday evening. During that week I made
3 some minor requests for some changes. I've been trying
4 to cooperate through this whole matter.

12:17:19 5 You know, the issues that's going on between
6 Mr. Sampson and Mr. Fink really have nothing to do with
7 my client. I just want to make sure that we're not
8 releasing anyone who wasn't a party to this action that
9 we might have some claims against in the future.

12:17:36 10 But I don't see that in the agreement that was
11 presented, if that's the case at this point. But we're
12 trying to get this along just as much as everyone else,
13 your Honor.

14 THE COURT: I understand.

12:17:48 15 Mr. Lemkul.

16 MR. LEMKUL: Yeah, your Honor, how are you?

17 THE COURT: Good.

18 MR. LEMKUL: Good, good. So the position of
19 Cox and IES, your Honor, is basically we sent back
12:17:59 20 changes to Mr. Sampson that were incorporated into the
21 release that he sent out.

22 I don't have any issue with Monday's changes.
23 I do agree that part and parcel to the Cox and IES
24 release would come, officers, agents, the typical
12:18:18 25 language that we all see in these releases. And that's

12:18:20 1 what we sent out.

2 So I really have nothing else to offer other
3 than to answer questions should the Court have them for
4 me or my clients.

12:18:29 5 THE COURT: Okay. I have no questions, sir,
6 at this point.

7 Okay. Mr. Sampson, have you had a chance to
8 see the revised proposed settlement agreement that's
9 been sent by Mr. Fink in this matter at approximately
12:18:43 10 9:30 this morning?

11 MR. SAMPSON: I didn't see a proposed
12 settlement agreement. I saw, like, a list of here's
13 some items. And the one that I take issue with is the
14 one that seeks to stop my client from being able to
12:18:56 15 proceed against Sesman and Duslak.

16 And yes, I do know and I understand if you
17 release a party, you typically would be releasing their
18 employees, and board of directors, and those types of
19 things unless you clearly indicate otherwise when you
12:19:10 20 put the settlement agreement together.

21 So when we put this on the record, that's why
22 I made it a point to say, none of this settlement
23 involves Sesman or Duslak at all in any of their
24 capacities. And if there was an idea of, well, hold
12:19:25 25 on, Sunrise wants all its employees, and there might be

12:19:29 1 a claim that they're employees, so that should have
2 been brought up when we put the terms on the record.
3 It shouldn't have been dropped on me just like they
4 couldn't come up later and say, we want it
12:19:39 5 confidential. Or, and there is language about
6 indemnification and what not, which we'll agree to even
7 though it wasn't specifically put on the record. But
8 if you wanted those -- when I say -- make it a point to
9 mention, and I'm sure had I said, for example, you
12:19:50 10 know, here's so and so, it's the CEO of Cox, we're not
11 releasing any claims against that person, I'm sure
12 Mr. Lemkul would have piped up and said, oh, no, hold
13 on. We don't agree to that. We were stippling on the
14 record putting the terms together.

12:20:05 15 So I think it's improper for Sunrise to stand
16 there while we're putting the settlement on the record,
17 and I say Sesman and Duslak are not released in any
18 way, shape, or form. They remain parties. We still
19 have all rights to proceed against them, and that's all
12:20:19 20 fine and dandy while we're on the record, and then to
21 come back later in the release and say, except they're
22 not. Because if they're employees they're out.

23 I don't think they're employees either as I
24 sit here right now. But I've not had a chance to find
12:20:32 25 any of that stuff out. I have not -- I have no

12:20:34 1 confirmation as to any of that. So but the bottom line
2 is, you know, what I proposed now is, again, the
3 settlement that says here's all the people. We agree
4 to release each other pursuant to the terms reached on
12:20:48 5 the record on those two days we were there. And then
6 we all sign it.

7 I don't see why anyone would have a problem
8 having that serve as the release given that it does
9 exactly what we agreed to do. The only thing I can
12:21:00 10 envision as to why that would be a problem for someone
11 is: One, they want to continue to delay things, which
12 is an inappropriate reason and shouldn't be permitted;
13 or two, they're looking to change the deal that was
14 reached on the record.

12:21:14 15 Because what I proposed says specifically
16 releasing each other as agreed on the record. No more,
17 no less. I don't think anybody should require that my
18 client do any more or any less for any of that.

19 So given, again, EDCR allows a settlement to
12:21:31 20 be enforceable if it's placed on the record, so we've
21 done that. Mr. Fink kept talking about we're looking
22 at getting people out. Well, they are out. Anybody
23 pursuant to the terms that were set forth on the
24 record, they're out. The agreement is enforceable on
12:21:49 25 the record. Beside the fact that the statute of

12:21:50 1 limitations ran over a year ago at this point.

2 So it's not a question about that. I don't
3 know what else is going on. And my clients should not
4 be -- my client should not be required to waive any
12:22:02 5 right at all that he -- that he specifically --
6 especially when he specifically preserved them on the
7 record when we -- when we resolved this thing and put
8 the settlement on the record.

9 So, again, I appreciate your Honor asking if
12:22:14 10 I've had a chance to review what they sent me. Again,
11 I didn't get an actual release. I just got an email
12 from Mr. Fink that had some terms. And the term that I
13 had an issue with is this idea that if they're
14 employees, then Sesman and Duslak are out. That was
12:22:27 15 not agreed to.

16 But I think what you should perhaps ask is, to
17 the defendants, you know, what about what Mr. Sampson
18 sent you guys Wednesday and Tuesday? Say, we hereby
19 release each other as agreed on the record, and it's
12:22:40 20 incorporated by this reference. And we're done. Why
21 wouldn't that work?

22 And if they're going to balk and somehow say
23 that won't work, then, clearly, they must be either
24 looking to just drag this thing out or trying to get
12:22:52 25 something in the release that wasn't on the record,

12:22:54 1 which I don't think the Court should permit.

2 THE COURT: Do we have a copy of that portion
3 of the record? Have we ordered one or no?

4 MR. SAMPSON: I've not ordered one. I mean,
12:23:06 5 again, that's another proposal is I will order a copy
6 of Wednesday and Friday's transcripts and just have
7 everyone just sign the transcripts so agreed, so
8 released.

9 THE COURT: All right. Anything else?

12:23:22 10 MR. SAMPSON: But whatever is on -- yeah.
11 Whatever is on the transcript from Wednesday and Friday
12 would be incorporated by reference with exactly what I
13 proposed. And it just says release each other as per
14 what was put on the record. And then we all sign off
12:23:36 15 and get my client his money. And then we're done.

16 THE COURT: Well, I don't know if it's -- I
17 wish it was just that simple.

18 The reason why I asked that question regarding
19 a copy of the transcript, I wish I could say with
12:23:51 20 computer-like recollection I can remember every
21 utterance in court regarding the general terms of the
22 settlement and the like, but I can't.

23 And so all I'm saying is this: As to whether
24 anyone is correct as to specifically what was placed on
12:24:06 25 the record, I'd need a copy of the transcript to make

12:24:08 1 that determination. That's what I'm saying.

2 MR. SAMPSON: I don't know that anyone is
3 disputing what I'm talking about. In fact, I think
4 Mr. Fink indicated that my discussion with what was
12:24:19 5 placed on the record was accurate.

6 I mean, my position is -- I'm telling you, we
7 put on the record -- we're not waiving, releasing, or
8 otherwise affecting anything against Sesman or Duslak.
9 I don't think anyone would dispute that.

12:24:34 10 And if they don't dispute it, I mean, we can
11 keep a transcript -- we can get a transcript if we need
12 to, but I don't think it's disputed what I'm telling
13 you as to what we agreed to.

14 THE COURT: Is it --

12:24:44 15 MR. SAMPSON: It was a pretty significant
16 point that day.

17 THE COURT: Is it disputed? Anyone?

18 MR. SAMPSON: Not -- I'm not disputing. I'm
19 not disputing my version of what happened. I tell you
12:24:58 20 that. This is Dave Sampson.

21 THE COURT: Okay. Mr. Fink, are we disputing
22 that?

23 MR. FINK: Well, first I did send this out at
24 9:35 this morning which included, like, I think, six
12:25:10 25 bullet points, five bullet points of things that were

12:25:13 1 kind of core to the agreement.

2 My best recollection is that when Mr. Sampson
3 said he was specifically retaining his rights to go
4 against Mr. Sesman and Mr. Duslak, we all agreed to
12:25:27 5 that. There was no specific discussion as to whether
6 or not they were independent contractors or employees.
7 So I didn't -- I didn't jump and say, well, to the
8 extent they're employees. This wouldn't cover them.
9 So that part is right.

12:25:41 10 But then I didn't know that I had to do that
11 because when you're releasing Sunrise, you're releasing
12 their employees, their board members, all of that. So
13 I don't know that I was thinking that that's something
14 I needed to specifically do.

12:25:53 15 I completely understood that to the extent
16 that Sesman and Duslak were his independent
17 contractors, which we all think they are, that the HOA
18 hired to do the lawn maintenance that it --
19 shouldn't -- it didn't and shouldn't affect
12:26:07 20 Mr. Sampson's rights to go after them. That was the
21 point.

22 But certainly not if it turns out that they
23 were my client's employees, which, again -- and I
24 appreciate Mr. Sampson recognizing that in most cases
12:26:20 25 that's what's included, but that's exactly what I was

12:26:22 1 thinking was excluded here. If they're employees,
2 they're covered.

3 THE COURT: So the impact of the -- what would
4 be considered the material terms of the settlement is
12:26:34 5 an issue.

6 MR. FINK: If -- if the -- I think the only
7 issue, if I'm not mistaken, is whether or not the
8 settlement covers those two gentlemen if it turns out
9 they're employees. That's it.

12:26:46 10 If they're not employees, there's no question
11 the settlement doesn't cover them. And allows
12 Mr. Sampson whatever avenue or avenues he needs to try
13 to recover money from them, including going after
14 Sunrise's insurance carrier if for some reason that
12:27:01 15 that carrier should have defended or indemnified those
16 two gentlemen as independent contractors. And that's
17 language that my carrier agreed to that's in that
18 agreement. Which is fine. And that absolutely was not
19 part of a negotiation to get them out.

12:27:16 20 But the issue really is, is whether or not if
21 it turns out that these two were employees and getting
22 W-2s, which there's been no evidence and no allegation
23 that there they were, that it's our belief that the
24 settlement covers them under that one circumstance.

12:27:34 25 THE COURT: Okay. Mr. Sampson.

12:27:35 1 MR. SAMPSON: Your Honor.

2 THE COURT: Go ahead.

3 MR. SAMPSON: Sure. All I would ask, again,
4 is the Court to consider, well, you know, that should
12:27:42 5 have been brought up on the record. Because I made
6 clear -- and there is no dispute it sounds like. I
7 made it clear we want to preserve all rights against
8 Sesman and Duslak. They've been defaulted. We want to
9 move forward against them. And this release and this
12:27:56 10 money doesn't go to affecting any of my client's rights
11 against them, period.

12 And the response while we were on the record
13 from Mr. Fink and everybody else was that is correct.
14 And we are in agreement.

12:28:08 15 And if they were going to raise some kind of,
16 well, hold on. Is this, then okay. But if not, then
17 that was the time to do it, and they did not do it.
18 And they did it -- they had a chance on Wednesday and
19 again on Friday. So we can't even blame it on, like,
12:28:23 20 spur of the moment. I didn't have time to consider it.
21 It just got tossed out there. It was brought up
22 specifically, and they agreed. And they can't now turn
23 around and unagree, or try to undo it when we said --
24 again, all I want to do is enforce the terms that were
12:28:39 25 placed on the record. And I don't think my client

12:28:41 1 should be forced to agree to terms that weren't placed
2 on the record, which Mr. Fink is now asking to do. I
3 think -- I hope Mr. Fink is correct when he says
4 they're not employees.

12:28:51 5 I'm a little concerned if he is so convinced
6 they're not employees why this is a sticking point.
7 Because it shouldn't be. If he's convinced they're not
8 employees, I don't know how it would turn out, as he
9 used the phrase, if they somehow would magically become
12:29:06 10 employees other than perhaps if the carrier goes to
11 Sunrise, and says, you know, I don't know. Something
12 goes on and all of a sudden that all -- that they come
13 up W-2s that were not provided before and Mr. Fink's
14 not aware of, and then we've somehow been mislead.

12:29:20 15 But the terms of the agreement were reached on
16 the record, and we're just asking no more, no less than
17 what was placed on the record be enforced. And since
18 it's been three weeks now and they can't seem to come
19 up with an agreement, that Sunrise would be on board
12:29:37 20 with that comports with what was on the record, then I
21 think the Court either just find that that's waived at
22 this point, or that they sign what I proposed. Which
23 is we just release each other pursuant to what was
24 placed on the record.

12:29:51 25 THE COURT: Anything else? There is no way

12:29:52 1 this can be worked out.

2 MR. FINK: Never say no way. But your Honor,
3 again --

4 THE COURT: And the reason why I do that, I
12:30:01 5 think everybody understands this, it's always easier.

6 MR. FINK: Right. I mean, it's -- it's
7 problematic. I mean, look, there's nothing in the
8 complaint. So when Mr. Sampson says, Well, then we
9 should have said something. The problem here is that
12:30:12 10 if we are looking at the record, we're looking at the
11 entire record.

12 And the entire record is the amended complaint
13 which makes no allegation, even an allegation, that
14 either one of those two gentlemen were employees of
12:30:23 15 Sunrise, or were working within the course and scope of
16 being employees of Sunrise.

17 So if that's what he has alleged, then that's
18 why I have no problem releasing them as to how he's
19 alleged it. Had he alleged in his amended complaint
12:30:36 20 that they were employees of Sunrise, that would have
21 been a different discussion on the record.

22 Should that have been made more clear from
23 both sides? Probably, which we wouldn't be here. But
24 the fact is it's -- again, it's in the operative
12:30:51 25 complaint. There is no allegations that they are

12:30:53 1 employees, which is why I didn't feel the need that I
2 had to clarify that.

3 And again, nothing in any 16.1 disclosure, up
4 until and including trial, that alleged that either one
12:31:02 5 of them were employees. And I also think and I didn't
6 check this before the hearing, but even when we did the
7 motion for summary judgment, and even the renewed
8 motion for summary judgment -- or I think it was a
9 motion for reconsideration, I don't believe, and I'll
12:31:15 10 apologize if I'm wrong here, I don't believe that even
11 then Mr. Sampson -- Mr. Sampson said they were
12 employees.

13 And then there was a motion in limine related
14 to keeping the gardener's statements out of evidence.
12:31:29 15 And, again, he didn't say they were employees. He said
16 that we argued about whether or not agent in principal
17 whether or not that would --

18 So there has never been an allegation by
19 Mr. Sampson in this case that they're employees. And I
12:31:39 20 think that's true which is what I said all along. I
21 don't think they were. I thought they were independent
22 contractors, two guys on a mower.

23 However, I'm sure the Court can appreciate
24 that even though I'm really, really comfortable with
12:31:53 25 that, I'm also not that comfortable with just leaving

12:31:57 1 it to wind.

2 So, I mean, maybe the best thing to do is to
3 get a copy of the transcripts from those two hearings
4 and try to hash it out. I mean, the good thing is we
12:32:06 5 do have the money, so we're not waiting on that. So if
6 there is no delay here, no one is trying to delay
7 anything. We're just trying to get it right and trying
8 to save our own --

9 THE COURT: Well, here's the issue. I mean,
12:32:18 10 I've been listening patiently. And it appears to be no
11 dispute that hypothetically they're independent
12 contractors and potentially additional insureds under
13 the insurance policy, there would be coverage.

14 MR. FINK: Well, well, no, no. Not a coverage
12:32:33 15 issue, but would allow them to go after my insurance
16 carrier.

17 THE COURT: Right.

18 MR. FINK: Absolutely.

19 THE COURT: I understand. It's not a
12:32:38 20 stipulation.

21 MR. FINK: Right.

22 THE COURT: It's not a stipulation of
23 coverage.

24 MR. FINK: Right.

12:32:41 25 THE COURT: But there's not a -- I get the

12:32:43 1 significance.

2 MR. FINK: Right.

3 MR. MELORO: And your Honor.

4 THE COURT: Yes.

12:32:48 5 MR. MELORO: Joseph Meloro on behalf of
6 Mr. Bushbaker.

7 Mr. Fink did send an email earlier today. And
8 there were some bullet points. One of the bullet
9 points that I want to make clear was that Mr. Bushbaker
12:32:59 10 is not waiving any claims against any insurance
11 carriers.

12 Also I'd like the record to reflect that
13 Mr. Sampson in his motion did state that Mr. Bushbaker
14 is not doing anything to delay this settlement and that
12:33:14 15 we've been cooperative.

16 And so I just want to make that clear that
17 we're not doing anything. This is a dispute. I think
18 it's pretty narrow on whether these are independent
19 contractors or employees. Doesn't really regard my
12:33:29 20 client. But we're trying to help facilitate a
21 settlement here.

22 MR. FINK: We'd like nothing more than to give
23 Mr. Sampson the money.

24 MR. SAMPSON: Your Honor.

12:33:38 25 THE COURT: Yes. Yes, Mr. Sampson.

12:33:39 1 MR. SAMPSON: Well, so given that's the case,
2 I think then why don't we do this. Why doesn't the
3 Court order the money be paid to Dr. Russo, you know,
4 forthwith, or however you want to do it. Within, I
12:33:51 5 don't know, by middle of the next week or something.
6 If it's here in town, it could even be by the end of
7 this week. But order that the funds be paid. And that
8 we set maybe a status check or something. Or where we
9 can look at --

12:34:03 10 I don't know what Mr. Fink -- I've never known
11 him to say something that's not accurate, but I don't
12 know that my complaint doesn't make those allegations.
13 I know I typically have a paragraph in every complaint
14 I've done that involves respondeat superior potentially
12:34:18 15 that says the parties -- that the defendants were all
16 agents, principals, employees, employers, managers and
17 service with one another. Perhaps it's not in there.
18 I don't know. I don't know what was said. Sounds like
19 neither does Mr. Fink with much surety about what was
12:34:33 20 said in relation to motions that were filed.

21 But I think you say, Look, the Court is going
22 to enforce the terms that were reached on the record.
23 So go ahead and pay the money. We'll figure out a way
24 to draft it and get it written up. But we're going to
12:34:45 25 enforce it pursuant to what was placed on the record.

12:34:47 1 And the other issue I've got is if, you know,
2 Mr. Fink is saying, Well, we never had any allegation
3 that he thought they were employees. We never -- it
4 was never anything that would have ever even entered my
12:34:57 5 mind, well then why now? Because I didn't bring it up.

6 Why now when all of a sudden it's the sticking
7 point. Something has gone on, and it sure -- I mean,
8 again, I only see two reasons why we would do anything
9 other than sign something that says the terms reached
12:35:12 10 on the record are incorporated herein and we agree to
11 them. Unless they're trying to delay things or put
12 something in there that wasn't reached on the record.

13 And the Court shouldn't permit either one of
14 those to take place. So, you know, I haven't heard any
12:35:24 15 objection to what I proposed a day or two ago saying
16 let's just sign something saying that we agree to the
17 terms as proposed on the record, or as placed on the
18 record and incorporated by this reference and then pay
19 the money, then we're done.

12:35:38 20 So, again, I would just ask we either do that
21 or the Courts say, look, as Mr. Fink said and I'm sure
22 Mr. Lemkul probably agrees, they'd love nothing more
23 than to give Dr. Russo his money. So go ahead and give
24 it to him. And then we can sit down at some point if
12:35:52 25 we need to have an evidentiary hearing or some other

12:35:54 1 kind of status check where we go over complaints or the
2 transcript from when we put it on the record. Because
3 at some point we'll have a release in place that
4 Dr. Russo will sign that comports to what was placed on
12:36:05 5 the record. No more, no, less.

6 THE COURT: I don't think I can do that, as
7 far as ordering payments of monies without an execution
8 of some sort of closing documents, or release, or
9 something like that.

12:36:22 10 MR. SAMPSON: So then what about the one I
11 proposed that now no one has as of this point had an
12 objection to?

13 THE COURT: Well, here's --

14 MR. SAMPSON: That I've heard.

12:36:31 15 THE COURT: This is the -- I think it's always
16 better for parties to come to some sort of resolution.
17 Because I can anticipate -- and I don't mind saying
18 this, and then I want to go to lunch. I think we all
19 do. But and I don't know this, but I can anticipate
12:36:57 20 potentially without having it all tied up, there could
21 be litigation as to the impact of the release under one
22 remote scenario. Right?

23 And that's the concern I have. And, I mean,
24 it doesn't matter, I mean, from a personal level. But
12:37:16 25 from a judicial perspective, that's why I always want

12:37:20 1 you to try to come to some sort of accord before I make
2 decisions because realistically it could be litigation.
3 I mean, the chances are remote. I get that.

4 Because when you look at it from this
12:37:36 5 perspective if there was truly evidence -- I mean, this
6 makes perfect sense. If there was evidence that they
7 were employees, there would not have been a default
8 judgment entered against them. There would have been
9 motions to set aside, answers, and the like. And
12:37:50 10 that's pretty much the status of the case because I
11 can't -- I can't foresee either Mr. Lemkul or Mr. Fink
12 permitting an employee to be defaulted; right?

13 MR. SAMPSON: Could we perhaps enter a
14 stipulation on the record here and now that for
12:38:06 15 purposes of this litigation they're not employees?

16 THE COURT: Well, I think -- here's the thing,
17 and I don't -- I mean, as far as -- and, I mean, you
18 know, when you look at it, this is so layered. I'd
19 hate to go down this rabbit hole. But there could be
12:38:22 20 arguments made based upon the law of the case; or facts
21 of the case; or how the case has developed; as it has
22 an impact, what does the release cover? And so those
23 are issues. I think -- I don't mind saying this. I
24 think it's almost -- it rises to a level of a
12:38:47 25 significant presumption they're not employees because

12:38:50 1 there would have been an answer filed, you know. But I
2 just want everyone to come to some sort of accord on
3 this.

4 MR. SAMPSON: Well, the problem is it's been
12:38:59 5 three weeks, and we haven't. And I've spent two weeks,
6 Monday the 21st until the following week before I heard
7 anything and Thursday until yesterday where I go with
8 no communication from the -- from Sunrise. Or -- and
9 one of those weeks was including Cox, and then three
12:39:19 10 weeks with Scarcelli. I'm glad to hear he's on board.
11 But I don't want any further -- I mean, I don't want to
12 tell my client, well you don't get your money and you
13 don't get your verdict either. So...

14 THE COURT: I understand.

12:39:30 15 MR. SAMPSON: I mean, I need at this point for
16 the Court to please take action to tell these
17 defendants, do what -- enter into a release that
18 comports no more no less than what was placed on the
19 record and give the doctor his money.

12:39:44 20 MR. MELORO: Your Honor, I take exception to
21 being grouped as defendants by Mr. Sampson. There are
22 separate entities here. I communicated with
23 Mr. Sampson and the other parties in this action, not
24 only that first week after we made this agreement but
12:40:01 25 the following week I did a follow up saying have we

12:40:05 1 come to any agreements. So I just want it clear when
2 Mr. Sampson says "defendants", which defendants he's
3 speaking of, please. Thank you.

4 MR. FINK: Your Honor --

12:40:15 5 MR. SAMPSON: And I thought -- I don't know
6 what comes through on the phone, but I thought I said
7 some of the defendants, specifically Sunrise. I
8 went -- I got the release either Sunday night, Monday
9 morning. Didn't hear anything for a week. And then we
12:40:29 10 talked from Monday to Thursday. I didn't hear anything
11 for another week until yesterday. Cox I didn't hear
12 for the first week, but we did deal with them the
13 following week. We got it all worked out.

14 Scarcelli I hadn't heard from hardly at all,
10:27:58 15 but it sounds today like they're on board.

16 (Reporter clarification)

17 So that's where we are at. And again, I
18 just -- I don't want -- please don't make me go back
19 and tell Dr. Russo you don't get your money; you don't
12:40:49 20 get your trial either. There is some kind of limbo.

21 I'd like to think there is some way the Court
22 can take action under the settlement to say here's what
23 you need to do, and it includes -- and it should
24 include signing the release that comports and provides
12:41:05 25 no more no less than what was placed on the record, and

12:41:08 1 tender the funds pretty quickly. We've already been
2 three weeks into this.

3 THE COURT: Mr. Fink.

4 MR. FINK: Good, your Honor. Mr. Sampson made
12:41:16 5 an interesting suggestion that I'd like to think about
6 and that may work. That if we say for the purposes of
7 this litigation they weren't employees. That may take
8 care of all of this. I would just need to run that by
9 my people. But that may take care of all of our
12:41:31 10 concerns at that point, and then we can -- we can be
11 done.

12 THE COURT: How's that, Mr. Sampson?

13 MR. SAMPSON: It was my suggestion, so I still
14 totally agree with it.

12:41:40 15 THE COURT: Well, you know what --

16 MR. SAMPSON: I would ask -- I would ask
17 just -- Mr. Fink has made a couple of comments today,
18 and I think the Court also echoed them, along the lines
19 of Sesman and Duslak, all rights against them, anybody
12:41:53 20 who insures them, you know, all of those are preserved.
21 They're not affected. I would like to make sure that
22 is crystal clear in whatever iteration we end up with.
23 I put some language in there that Mr. Fink has asked to
24 modify. And I think he and I hopefully can work that
12:42:08 25 out, and say, you know, that sentiment that, I believe,

12:42:11 1 was expressed much more clearly today than in the
2 agreement be set out very, very clearly.

3 THE COURT: And I think he has no problem with
4 that because that was his idea, you know, so regarding
12:42:24 5 the fact that if they're independent contractors,
6 there's no waiver of the right to seek coverage for
7 this case. I mean, I get that based upon the insurance
8 policy. And no big deal there.

9 But, okay. How about this? Because I know
12:42:41 10 your client wants their money. And I've been in that
11 situation before.

12 How long do you think it would take you,
13 Mr. Fink, to run that passed your clients?

14 MR. FINK: Well, I can try to do that now.
12:42:55 15 They're on the east coast, Philly. So I can try to do
16 that now. But I would say for sure -- and they're,
17 obviously, they're hot on this issue. I would say if I
18 can't get that by them today for whatever reason,
19 tomorrow morning. You know, I get up early. I'm
12:43:09 20 usually up east coast time anyway. So I think I can
21 get an answer from them, again, either this afternoon
22 or before everybody generally wakes up in the morning.
23 But I think it's -- I think it's a workable solution
24 from where I'm sitting.

12:43:25 25 And yeah, Mr. Sampson and I, other than this

12:43:28 1 one thing, we're in complete agreement. I don't think
2 we have any issues on that.

3 THE COURT: So how about this then.

4 (Off-the-record scheduling discussion
01:24:06 5 between the court clerk and the Court.)

6 THE COURT: How about a status check,
7 telephonic status check at 9:30?

8 MR. FINK: That would be fine for Sunrise,
9 Judge.

12:43:52 10 THE COURT: Is that fine, Mr. Sampson?

11 MR. SAMPSON: That's fine.

12 THE COURT: Okay.

13 MR. SAMPSON: In the meantime, Mr. Fink can
14 just re-forward to me whatever the final version is
12:44:04 15 he's claiming. Or perhaps what we're talking the
16 stipulation he'd be okay with, the last one I provided.
17 And then I get a chance to look that over, and we can
18 talk it out tomorrow and find out where we're at, but
19 what if anything else we would do from there.

12:44:16 20 THE COURT: Well, I think this -- I think it's
21 actually much simpler than that in this regard.

22 Hypothetically, Mr. Fink hears back from the
23 east coast sometime today. He gives you a phone call
24 or email, says, Look, my client has no problems with
12:44:32 25 the stipulation. You guys move from -- with that, with

12:44:36 1 the stipulation and whatever release language you feel
2 would be appropriate. And everything is covered. I
3 make my phone call tomorrow at 9:30. Say, Look, Judge,
4 we've resolved this issue.

12:44:50 5 MR. SAMPSON: That would be nice too.

6 THE COURT: I mean, I can foresee that
7 happening. And the reason -- and what that does is
8 this, and remember this is important too, that gives
9 finality.

12:45:02 10 MR. SAMPSON: Yeah.

11 THE COURT: That's a big -- and I'm -- and,
12 Mr. Sampson, I understand your plight, and I respect
13 it. And I'm not just kicking the can down the road.
14 I'd rather give you finality now than maybe appeals,
12:45:17 15 those types of things. And we don't need that. We
16 need to just put this case to bed. Because 24 hours
17 could save you a year and a half, right?

18 MR. FINK: Mr. Sampson, did you get a copy of
19 the email I just sent over to you?

12:45:31 20 MR. SAMPSON: I don't know.

21 MR. FINK: Okay.

22 MR. SAMPSON: I'm not in a position to check
23 my emails right now.

24 MR. FINK: All right. Let me know if you
12:45:37 25 didn't get it. I just sent it over again, so I can

12:45:40 1 do --

2 MR. SAMPSON: All right. I'll take a look.

3 THE COURT: So what we'll do, we'll set a

4 9:00 o'clock conference call, and we'll use Court Call.

12:45:46 5 9:30, I'm sorry.

6 MR. FINK: 9:30.

7 THE COURT: 9:30. We'll use Court Call. And

8 we'll -- how do we do that?

9 THE COURT CLERK: Do you all have

12:45:56 10 instructions?

11 MR. LEMKUL: No.

12 MR. FINK: I'm sure my office does somewhere.

13 THE COURT CLERK: No worries.

14 MR. FINK: Those are all beyond my

12:46:03 15 capabilities.

16 THE COURT: And it's just a continuation of

17 today's hearing, Mr. Sampson and Mr. Lemkul. That's

18 all it is.

19 MR. LEMKUL: Sounds good, your Honor.

12:46:14 20 MR. SAMPSON: Sounds good.

21 THE COURT: All right. Everyone enjoy your

22 day.

23 MR. FINK: Thank you.

24 THE COURT: All right.

12:46:16 25 MR. SAMPSON: All right.

12:46:21 1

MR. MELORO: Have a good lunch, your Honor.

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(Proceedings were concluded.)

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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

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

EXHIBIT “3”

SETTLEMENT AGREEMENT AND RELEASE

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

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



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

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

RECITALS

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

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

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

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

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

1. SETTLEMENT PAYMENT TERMS AND CONDITIONS.

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



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

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

2. COVENANT NOT TO SUE AND DISMISSAL.

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

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

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

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



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

4. RELEASE.

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

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

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

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

5. HANDLING OF SETTLEMENT FUNDS.

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

6. REPRESENTATION BY COUNSEL.

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

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

7. DISPUTED CLAIMS.

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

8. FURTHER ASSURANCES.

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

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

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

10. BENEFIT AND BURDEN.

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

11. WAIVER AND AMENDMENT.

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

12. CAPTIONS AND INTERPRETATIONS.

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

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

13. AUTHORITY TO EXECUTE.

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

14. INTEGRATION.

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

15. SEVERANCE.

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

16. VOLUNTARY AGREEMENT.

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

17. GOVERNING LAW.

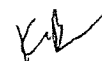
This Agreement has been negotiated and entered into in the State of Nevada, and shall be governed by, construed and enforced in accordance with the internal laws of the State of Nevada.

18. COUNTERPARTS.

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

19. ATTORNEYS' FEES.

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



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

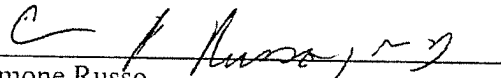
ii) Attorney's Fees For Future Action: Should any PARTY hereto reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, the prevailing PARTY shall be reimbursed by the losing PARTY for all costs and expenses incurred thereby including, but not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



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

Dated: _____

SIMONE RUSSO


Simone Russo

Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

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

Dated: _____

SIMONE RUSSO

15/
Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

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

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX Communications

Dated: _____

PW JAMES MANAGEMENT & CONSULTING, LLC

PW James Management & Consulting, LLC

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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 Russo VP
IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

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

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: 1/2/20

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

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

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By: 

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

Dated: _____

SPRINGEL & FINK, LLP

By: _____

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

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: 

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

Dated: _____

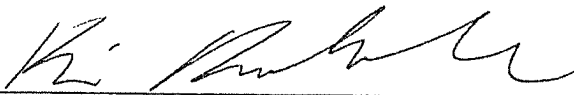
SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: 11/22/2019

KEVIN BUSHBAKER



Kevin Bushbaker

Dated: _____

CHRIS SCARCELLI

Chris Scarcelli

SIGNATURES TO FOLLOW ON NEXT PAGE

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

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

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

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

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: _____

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

Dated: _____

SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

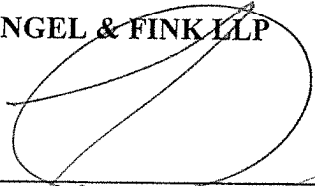
APPROVED AS TO FORM AND CONTENT:

Dated: _____

LAW OFFICE OF DAVID SAMPSON, LLC

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

Dated: 1/10/20

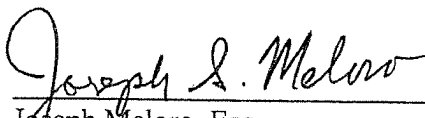
SPRINGEL & FINK LLP

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

Dated: _____

MORRIS, SULLIVAN & LEMKUL

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

Dated: 12/05/19

SGRO & ROGER

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

Dated: _____

LIPSON NEILSON

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

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

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

Sunrise Villas IX Homeowner's Association

Dated: 12/4/19

IES RESIDENTIAL, INC.

Christopher Russo VP
IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX Communications

Dated: _____

PW JAMES MANAGEMENT & CONSULTING, LLC

PW James Management & Consulting, LLC

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

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: 1/2/20

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

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

Dated: _____

PW JAMES MANAGEMENT & CONSULTING, LLC

PW James Management & Consulting, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By: 

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

Dated: _____

SPRINGEL & FINK LLP

By: _____

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

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: 

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

Dated: _____


SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: 11/22/2019

KEVIN BUSHBAKER



Kevin Bushbaker

Dated: _____

CHRIS SCARCELLI

Chris Scarcelli

SIGNATURES TO FOLLOW ON NEXT PAGE

APPROVED AS TO FORM AND CONTENT:

Dated: _____

LAW OFFICE OF DAVID SAMPSON, LLC

By: _____

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

Dated: _____

SPRINGEL & FINK LLP

By: _____

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

Dated: _____

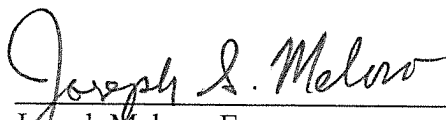
MORRIS, SULLIVAN & LEMKUL

By: _____

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

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

By: _____


 Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

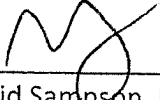
STIPULATION BETWEEN SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AND SIMONE RUSSO RELATED TO CASE A-17-753606 (SIMONE RUSSO V. COX COMMUNICATIONS LAS VEGAS, INC.).

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

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By:


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

Dated: _____

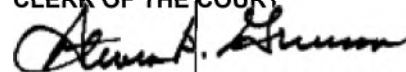
SPRINGEL & FINK LLP

By:

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

EXHIBIT “4”

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.

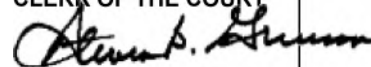
DATED this 17th day of December, 2019.


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



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

Attorneys for Intervenor
QBE Insurance Corporation

DISTRICT COURT
CLARK COUNTY, NEVADA

SIMONE RUSSO,	)	Case No.: A753606
	)	Dept: XVI
Plaintiff,)	
	)	CONSOLIDATED BRIEF RE: QBE'S
vs.	)	MOTION TO INTERVENE TO ENFORCE
	)	SETTLEMENT AND PLAINTIFF'S
COX COMMUNICATIONS LAS VEGAS,	)	MOTION TO ENFORCE SETTLEMENT
INC., et al.)	
	)	Hearing Dates: February 11 and 25, 2021
Defendants.)	

Proposed Intervenor QBE hereby submits the following consolidated brief in which it both replies to its Motion to Intervene and Enforce Settlement and opposes Plaintiff's Motion to Enforce Settlement.¹

Introduction

At bottom, the dispute between the parties centers around whether the settlement reached in this case is binding and enforceable such that default judgment entered by this Court on December 17, 2019 is valid or void. HOA Motion to Set Aside Judgment, Exhibit 8. At the time the judgment was entered, it is undisputed that Plaintiff had agreed to release Duslak and Sesman from any liability as former HOA employees. HOA Motion to Set Aside Judgment, See Exhibits 4-7. In obtaining the judgment, however, Plaintiff appears to have ignored his agreement to release Duslak

¹ A hearing is set in connection with a third motion that Sunrise HOA filed for February 23, 2021. As the relief requested in all three (3) motions is intertwined, QBE defers to this Court whether to consolidate all hearings.

1 and Sesman as former HOA employees as evidenced by the following representation counsel for
2 Plaintiff recently made:

3 I completely agree the judgment is against them as individuals. My
4 point is my client never agreed to release them as employees.

5 See 01/29/21 Email, a copy of which is attached as Exhibit D.

6 Counsel's statement is perplexing as a few days earlier and in an effort to meet and confer,
7 the following email was sent by counsel for the HOA:

8 To confirm, you told me that Dr. Russo's judgment against Duslak &
9 Sesman is not based on their status as former employees of Sunrise.

10 You also advised that you mistakenly referred to them as "employees"
11 rather than independent contractors in both your answer to QBE's
Complaint and Cross-Complaint in the Federal action.

12 See 01/27/21 Email, a copy of which is attached as Exhibit C.

13 The email was followed by another sent by counsel for QBE memorializing the following:

14 David - per a separate email exchange between us, you stated as
15 follows (consistent with the exchange below):

16 The Judgment is not against Duslak or Sesman as employees . .

17 The record in this matter is very clear the judgment is against Duslak
18 and Sesman individually and is not premised on their liability as
employees . .²

19 Exhibit C.

20 Setting aside the fact that no ability exists to reconcile these statements, it is now apparent
21 that Plaintiff undertook no effort to limit the default judgment to the conduct of Duslak and Sesman
22 as independent contractors and not former HOA employees.³ Given this, the judgment violates the

23 _____
24 ² Unfortunately no record exists in connection with the default judgment (i.e., no documents, no transcript). Despite
25 repeated requests, counsel for Plaintiff has refused to produce copies of documents presented to this Court in connection
with the default judgment such that no understanding exists as to the basis for the judgment.

26 ³ While speculative, it would appear that counsel for Plaintiff was amenable to releasing Duslak and Sesman as former
27 HOA employees in 2019 based on the view that the issue did not bear on coverage under the insurance policy QBE
issued to Sunrise HOA. Counsel's recent conduct in trying to recast the settlement suggests/reflects misgivings
28 regarding the prior settlement, likely based on a closer review of the policy QBE issued. Unfortunately, these efforts
have resulted in a flurry of litigation, including the assertion by Duslak and Sesman of affirmative claims against both
QBE and the HOA, both of whom remain silent as to efforts to protect them from Plaintiff. HOA Motion, Ex. 10.

terms of the settlement reached in this case such that it is invalid and void.

Accordingly, for the reasons set forth herein, QBE's Motion To Enforce the Settlement is properly granted while Plaintiff's Motion to Enforce the Settlement is properly denied.

Discussion

A. QBE Is Entitled To Intervene As An Intended Third Party Beneficiary Of The Settlement Reached In This Case.

NRCP 24 provides as follows:

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

...

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) Permissive Intervention.

(1) In General. On timely motion, the court may permit anyone to intervene who:

...

(B) has a claim or defense that shares with the main action a common question of law or fact.

Intervention as a matter of right per NRCP 24(a) exists where the party shows that (1) it has a sufficient interest in the subject matter of the litigation, (2) its ability to protect its interest would be impaired if it does not intervene, (3) its interest is not adequately represented, and (4) its application is timely. *Am. Home Assurance Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229 (2006). Meanwhile, a trial court has substantial discretion to permit for intervention per NRCP 24(b) when a proper showing has been made. *Hairr v. First Jud. Dist. Ct.*, 132 Nev. 180 (2016).

QBE has met its burden to intervene as a matter of right based on the following:

- By funding the settlement, QBE has a direct interest in this case
- QBE's ability to protect itself is impaired if not afforded the opportunity to intervene and enforce the settlement

- 1 • By funding the settlement, QBE's interests are separate and distinct from the Sunrise
- 2 HOA (although they do overlap)
- 3 • The instant motion was filed promptly after learning that Plaintiff had disavowed
- 4 himself of the settlement reached in this case.

5 Based on these factors, QBE is entitled to intervene as a matter of right.

6 Regardless of any right to intervene, however, this Court has the discretion to let QBE
 7 intervene per NRCP 24(b) given its interest in the settlement. In the separate coverage action
 8 pending in Federal Court, Duslak and Sesman have sued both QBE and the HOA. See HOA
 9 Motion, Exhibit 10, pp 9-39. Per this pleading, each contend that the insurance policy QBE issued
 10 affords coverage for the default judgment as both were former HOA employees so as to qualify as
 11 insureds under the policy. HOA Motion, Exhibit 10, ¶¶ 28, 33-35, 43, 48, 51-53, 80, 113-115. As
 12 Duslak and Sesman have asserted claims against QBE and the HOA that expressly violate the terms
 13 of the settlement reached in this case, QBE's interest in the settlement is direct and substantial.⁴

14 In arguing otherwise, Plaintiff relies on case law in which an insurer that had never
 15 participated in a case seeks to enter the case following the entry of a judgment in an effort to set it
 16 aside. See, e.g., *Lopez v. Merit Ins. Co.*, 109 Nev. 553 (1993). In this case, QBE is differently
 17 situated since it participated in this case and funded the settlement reached on behalf of Sunrise
 18 HOA. In so doing, QBE simply seeks to enforce the settlement that it, along with others, both
 19 agreed to and funded.

20 *Nalder v. Eighth Judicial District*, __ Nev. __, 462 P.3d 677 (2000), a case Plaintiff relies
 21 upon, actually supports QBE's position. In that case, the trial court permitted an insurer to intervene
 22 to address a settlement - precisely the circumstance at issue in this case.

23 Broadly speaking, Plaintiff has failed to cite to a case that bars an insurer from seeking to
 24 enforce a settlement the insurer agreed to and funded. In the absence of any decisional law barring

25 ⁴ The allegations mirror those Plaintiff previously asserted which were subsequently withdrawn on the premise that they
 26 were mistakenly asserted in the fact of concerns raised regarding Rule 11. Meanwhile, counsel for Duslak and Sesman
 27 has declined to explain why each has not joined with QBE and the HOA to set aside the default judgment. While
 28 speculative, it may be the case that each now has an ulterior motive of trying to manufacture insurance coverage so as to
 actually prefer that each are judgment debtors. Of significance, no indication exists that either have paid any sums
 toward the judgment such that the document simply serves as a conduit to sue for profit both QBE and the HOA.

1 intervention in these circumstances, it is respectfully submitted that QBE should be permitted to
 2 intervene in this matter given its role and direct interest in the outcome of the settlement.

3 B. QBE's Motion Is Properly Granted.

4 Per above, counsel for Plaintiff recently represented the following regarding the settlement
 5 reached in this case and the subsequently entered default judgment:

6 I completely agree the judgment is against them as individuals. My
 7 point is my client never agreed to release them as employees.

8 Exhibit D.

9 This statement runs counter to the settlement reached between the parties and confirms that
 10 the judgment was obtained under false pretenses.

11 As this Court is aware, difficulties were encountered regarding the scope and extent of the
 12 carve out of Duslak and Sesman, leading to a November 7, 2019 hearing before this Court to
 13 address the scope and extent of the release. See HOA Motion, Exhibit 4. The hearing was
 14 necessitated by the fact while the parties had agreed to reduce the settlement to writing, a core
 15 dispute arose regarding the carve out of Duslak and Sesman. See HOA Motion, Ex. 2, 9:21-22.⁵

16 In summarizing the dispute, counsel for HOA advised the the Court as follows:

17 The hold up, and Mr. Sampson I think said it but I'll say it again, I
 18 think the real hold up right now is whether or not the release that we
 19 negotiated was intended to cover Mr. Sesman and Duslak, D-U-S-L-
 20 A-K, I think. Actually, I've got it in front of me. Okay. Duslak, D-U-
 S-L-A-K, and Sesman, S-E-S-M-A-N, if they were considered

21 There's never been one bit of evidence in this case that they were
 22 employees. It was always that they were independent contractors. But
 as I'm sure the Court has dealt with thousands of settlements, when
 you settle with an entity, you are settling with the employees too.

23 There's nothing in Mr. Sampson's amended complaint that even
 24 suggests or asserts that either one of these gentlemen is an employee.
 There is nothing in any one of his disclosures that asserts they're
 employees.

25 So the idea here is that not only is Sunrise getting itself out of the
 26 case, but it's also getting out its employees, which also includes board

27 ⁵ As reflected in the record, the settlement was to be funded by insurers, thereby confirming QBE's interest and standing
 28 as a third party beneficiary. See HOA Motion, Ex. 2, 8:19-24.

1 members. Although, we didn't specifically say that on the record
2 either, but also Cox, IES, they're also getting their employees out.

3 HOA Motion, Exhibit 4, 16:12-17:25

4 Counsel for the HOA further stated as follows:

5 So I think that the only hang up is whether or not this settlement
6 includes Mr. Duslak and Mr. Sesman if they are found to be
employees of Sunrise. And I think that's it.

7 If they're not and they're independent contractors, then the settlement
8 agreement absolutely does not cover them. Would allow Mr. Sampson
9 to do what he needs to do. And even try to go after my client's
10 insurance carriers to see if there is coverage for them as independent
11 contractors. We all agree that -- that was one of the things that was
important to him. We aren't seeking to release that.

12 But to the extent they're employees, this should cover it. And I think, I
13 think that's really where we are, Judge.

14 HOA Motion, Exhibit 4, 18:6-23, see also 27:6-24.

15 Counsel for Plaintiff initially responded that while he had no evidence existed that Duslak
16 and Sesman were HOA employees, it was his view that the settlement did not necessarily
17 contemplate the release of them in any capacity. See Exhibit 4, 20:16-24:8. In that regard, counsel
18 for Plaintiff proceeded to make the following statement:

19 So I think it's improper for Sunrise to stand there while we're putting
20 the settlement on the record, and I say Sesman and Duslak are not
released in any way, shape, or form. They remain parties. We still
21 have all rights to proceed against them, and that's all fine and dandy
22 while we're on the record, and then to come back later in the release
23 and say, except they're not. Because if they're employees they're out.

24 HOA Motion, Ex. 4, 21:15-22.

25 In response to this comment, this Court stated as follows:

26 Because when you look at it from this perspective if there was truly
27 evidence -- I mean, this makes perfect sense. If there was evidence
28 that they were employees, there would not have been a default
judgment entered against them. There would have been motions to set
29 aside, answers, and the like. And that's pretty much the status of the
30 case because I can't -- I can't foresee either Mr. Lemkul or Mr. Fink
31 permitting an employee to be defaulted; right?

32 HOA Motion, Exhibit 4, 37:4-12.

33 In addressing this Court's concerns regarding the employee issue, counsel for Plaintiff made

1 the following proposal:

2 Could we perhaps enter a stipulation on the record here and now that
3 for purposes of this litigation they're not employees?

4 HOA Motion, Exhibit 4, 37:13-15.

5 The proposal led to the following exchange:

6 MR. FINK: Good, your Honor. Mr. Sampson made an interesting
7 suggestion that I'd like to think about and that may work. That if we
8 say for the purposes of this litigation they weren't employees. That
9 may take care of all of this. I would just need to run that by my
10 people. But that may take care of all of our concerns at that point, and
11 then we can -- we can be done.

12 THE COURT: How's that, Mr. Sampson?

13 MR. SAMPSON: It was my suggestion, so I still totally agree with it.

14 HOA Motion, Exhibit 4, 40:4-14.

15 In confirming that the proposal contemplated that Plaintiff would retain the right to proceed
16 against Duslak and Sesman solely in their capacity as independent contractors, the Court made the
17 following statement:

18 THE COURT: And I think he has no problem with that because that
19 was his idea, you know, so regarding the fact that if they're
20 independent contractors, there's no waiver of the right to seek
21 coverage for this case. I mean, I get that based upon the insurance
22 policy. And no big deal there.

23 HOA Motion, Exhibit 4, 41:3-8.

24 The following day, counsel for Plaintiff sent an email advising that he had made a few minor
25 changes to the release in light of the agreement reached between the parties. The email counsel for
26 Plaintiff sent enclosed copy of a draft Stipulation he was agreeable to that provided as follows:

27 IT IS HEREBY STIPULATED THAT FOR THE PURPOSES OF
28 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 WITH
 WAGES, AND WHOM SUNRISE VILLAS IX HOMEOWNERS
 ASSOCIATION HAD THE RIGHT TO DIRECT AND CONTROL

1 WHILE DUSLAK AND SESMAN PERFORMED SERVICES FOR
2 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION... .

3 HOA Motion, Exhibit 5, p 4.

4 In connection with a status check held later that day, counsel for Plaintiff made the
5 following representation to the Court regarding recent developments:

6 So perhaps the Court could say, you know, if Mr. Fink and his client
7 agree to what Mr. Sampson proposed this morning, and no one else
8 has any objection on this Sunrise employee Duslak Sesman thing then
9 we'll go ahead and sign what Mr. Sampson proposed this morning.
10 And that's going to be done.

11 And if for some reason Mr. Fink's client doesn't agree, then we'll do
12 the other proposal Mr. Sampson set up which is we all just all release
13 each other pursuant to the terms that were placed on the record on the
14 16th, and 18th which are incorporated by this reference, and we'll just
15 do it that way.

16 HOA Motion, Exhibit 6, 5:22-6:8.

17 In response, the Court made the following comment:

18 There appears to be a significant probability that based upon the
19 action of the parties, and more specifically Mr. Fink, that we have an
20 agreement in principle as to the language that will be in the
21 agreement. Because whatever changes were made as it related to the
22 two putative/independent contractor, whatever status they have,
23 apparently there is some sort of agreement as the type of language
24 that would be appropriate. And so all we have to do at this point is
25 this: Either it's approved or it's not approved.

26 If it's approved, then we're done. There's no need for law and motion.
27 There's no need for any decisions from me. I would anticipate the
28 checks would be exchanged shortly.

29 HOA Motion, Exhibit 6, 8:3-17.

30 The HOA and its insurer ultimately agreed to the revisions, leading to the full execution of
31 the release agreement (including the stipulation) and the disbursement of the proceeds. See HOA
32 Motion, Ex. 7.

33 This record undercuts Plaintiff's contention that he "never agreed to release [Duslak and
34 Sesman] as employees." Exhibit B. Accordingly, QBE's Motion is properly granted.

35 C. Plaintiff's Three (3) Separate Oppositions Ignore The Record Before This Court.

36 In violation of the rules of civil procedure, Plaintiff has filed three (3) separate Opposition

1 briefs to QBE's Motion. To the extent the Court elects to consider each Opposition, the arguments
2 raised in each fail.⁶

3 Opposition No. 1 (filed on January 15, 2021), premised on the contention that Plaintiff
4 retained all rights against Duslak and Sesman without limitation, ignores the agreement reached in
5 connection with the November 7 and 8 hearings. HOA Motion, Exs 4, 6. Plaintiff's contention that
6 he "never agreed to not seek recovery from DUSLAK and SESMAN based on the contention that
7 both were HOA employees" is belied by the record before this Court. See 01/15/21 Opp, 18:3-5.

8 Opposition No. 2 (filed on January 19, 2021) also ignores the record before this Court.
9 Again, Plaintiff's contention that he "retained all rights to pursue any claims against DUSLAK
10 and/or SESMAN, and did not release any right to pursue the said individuals in any manner" is
11 directly contrary to the settlement reached between the parties. See 01/19/21 Opp, 4:3-8.

12 Finally, Opposition No. 3 (filed on February 1, 2021), Plaintiff finally addresses the
13 transcript of the November 7, 2019 hearing. In so doing, however, Plaintiff ignores the fact that
14 counsel made the following preferred stipulation:

15 Could we perhaps enter a stipulation on the record here and now that
16 for purposes of this litigation they're not employees?

17 HOA Motion, Exhibit 4, 37:13-15.

18 As addressed exhaustively herein, it is precisely this stipulation that serves as the basis for
19 the Settlement Agreement in which counsel stipulated that Plaintiff's claims against Duslak and
20 Sesman as former HOA employees were released. See HOA Motion, Ex. 7. As the settlement is
21 binding and enforceable, Plaintiff's efforts to disavow himself from it fail.

22 D. The Default Judgment Is Properly Set Aside.

23 No court record exists of the default judgment entered on December 17, 2019 as the court
24 file includes no documents and the hearing was not recorded. HOA Motion, Ex. 9. Meanwhile,
25 efforts to obtain copies from counsel for Plaintiff of the record have been unsuccessful. On this
26 basis alone, the judgment is void. See *Preciado v. State*, 130 Nev. 40, 43, 318 P.3d 176, 178

27 _____
28 ⁶ While QBE addresses each Opposition herein out of an abundance of caution, the latter two (2) Oppositions are
procedurally defective such that they should be stricken.

(2014), explaining that the absence of a record may be reversible error if the record precludes an appellate court from conducting a meaningful review of the alleged errors; see also *City of Las Vegas v. Eighth Judicial District Court in and for County of Clark*, 133 Nev. 658 (2017) explaining that prejudice is presumed in the absence of any record.

Regardless, the parties now have clarity as to what likely occurred counsel for Plaintiff has represented as follows regarding the default judgment:

I completely agree the judgment is against them as individuals. My point is my client never agreed to release them as employees.

Exhibit D.

Counsel's position violates the terms of the settlement reached between the parties. Accordingly, the judgment is void.

E. If Any Merit Exists To Plaintiff's Position, The Settlement Should Be Set Aside As No Meeting Of the Minds Exists.

It is axiomatic that a settlement requires mutual assent such that a meeting of the minds must exist as to all essential terms. *Grisham v. Grisham*, 128 Nev. 679, 685 (2012); see also *May v. Anderson*, 121 Nev. 668, 672, (2005).

Per above, a meeting of the minds appears to exist regarding the fact that Plaintiff is barred from pursuing Duslak and Sesman as former HOA employees. In the event this Court believes otherwise, however, no settlement would appear to exist.

Conclusion

For the reasons set forth herein, it is respectfully submitted that QBE's motion be granted and that Plaintiff's motion be denied.

Dated: February 4, 2021

MORALES FIERRO & REEVES

By: /s/ William C. Reeves

Ramiro Morales
William C. Reeves
600 S. Tonopah Dr., Suite 300
Las Vegas, NV 89106
Attorneys for QBE

Supporting Declaration

I, William Reeves, declare as follows:

1. I am an attorney with Morales Fierro & Reeves, counsel for QBE.

2. Attached hereto as Exhibits C and D are true and correct copies of correspondence between the parties.

I declare that the foregoing is true and correct based on my own personal knowledge.

Executed in Concord, California on the date specified below.

Dated: February 4, 2021



William C. Reeves

Exhibit C

William Reeves

From: William Reeves <wreeves@mfrlegal.com>
Sent: Wednesday, January 27, 2021 12:27 PM
To: David Sampson
Cc: Kimball Jones; Leonard Fink
Subject: RE: Russo
Attachments: Motion.pdf; Opposition.pdf

David - per a separate email exchange between us, you stated as follows (consistent with the exchange below):

The Judgment is not against Duslak or Sesman as employees . . .

. . .

The record in this matter is very clear the judgment is against Duslak and Sesman individually and is not premised on their liability as employees . . .

These concessions highlight that the attached documents which you previously filed violate Rule 11.

Please advise ASAP how, as an officer of the Court, you plan to correct the record and advise the Court of your various "mistakes."

All rights remain reserved.

William C. Reeves
MORALES • FIERRO • REEVES
 2151 Salvio Street, Suite 280
 Concord, CA 94520
 (925) 288-1776

From: William Reeves [mailto:wreeves@mfrlegal.com]
Sent: Wednesday, January 27, 2021 10:57 AM
To: Leonard Fink; David Sampson
Cc: Kimball Jones
Subject: RE: Russo

Lenny - Thanks for send the email below. Very helpful.

David - It would have been helpful if you had told me that you had made "mistakes" in multiple filings.

In light of these "mistakes," however, I do not believe the judgment can simply be amended at this point as the Court needs to understand that any judgment is based on IC conduct only (if any) and not as HOA employees, especially given that Duslak and Sesman allege they were former HOA employees.

In that regard, you represented the following to the Court:

After Simone's fall, Simone's wife examined the cable and found that landscapers, Duslak and Sesman had dug a trench and caused the cable to be dislodged from the expansion joint the cable was placed in by Cox Communications. Defendants, Duslak and Sesman were aware of the tripping hazard they had created by dislodging the cable from the expansion joint. Duslak and Sesman did nothing to rectify the hazard Sesman and Duslak created.

As you know, Ms. Russo's deposition testimony does not support this representation. Another "mistake?" I again remind you of Rule 11.

Please provide copies of all documents provided to the Court in connection with the judgment.

Thank you. All rights remain reserved.

William C. Reeves
MORALES • FIERRO • REEVES
 2151 Salvio Street, Suite 280
 Concord, CA 94520
 (925) 288-1776

From: Leonard Fink [mailto:lfink@springelfink.com]
Sent: Wednesday, January 27, 2021 10:31 AM
To: David Sampson
Cc: William Reeves
Subject: Russo

Dave,

I wanted to get off of the thread between you, Bill and Kimball Jones.

I have read the emails between you and Bill related to whether or not Dr. Russo is predicated his default claim against Duslak and Sesman as employees or independent contractors and the reference to our phone call from the other day.

To confirm, you told me that Dr. Russo's judgment against Duslak & Sesman is not based on their status as former employees of Sunrise.

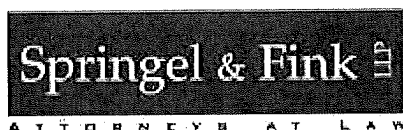
You also advised that you mistakenly referred to them as "employees" rather than independent contractors in both your answer to QBE's Complaint and Cross-Complaint in the Federal action

If I'm wrong about either of these, please let us all know.

Otherwise, I propose that we jointly request that Judge Williams amend the judgment to clearly reflect that it is not based on the conduct of Duslak and Sesman as former HOA employees. Please let me know your thoughts.

Lenny

Leonard Fink
 Partner



9075 W. Diablo Drive., Suite 302 | Las Vegas, NV 89148
 Tel: (702) 804-0706 | Fax: (702) 804-0798

Exhibit D

William Reeves

From: David Sampson <davidsampsonlaw@gmail.com>
Sent: Friday, January 29, 2021 10:14 AM
To: William Reeves
Subject: Re: QBE v. Russo

I completely agree the judgment is against them as individuals. My point is my client never agreed to release them as employees.

Thank you,

On Fri, Jan 29, 2021 at 10:04 AM William Reeves <wreeves@mfrlegal.com> wrote:

In so doing, make sure you provide the Court with the attached and be mindful of the penalty for perjury.

William C. Reeves

MORALES • FIERRO • REEVES

2151 Salvio Street, Suite 280

Concord, CA 94520

(925) 288-1776

From: David Sampson [mailto:davidsampsonlaw@gmail.com]
Sent: Friday, January 29, 2021 9:59 AM
To: William Reeves
Subject: Re: QBE v. Russo

Will do!

On Fri, Jan 29, 2021 at 9:56 AM William Reeves <wreeves@mfrlegal.com> wrote:

No need to correct anything. Proceed as you deem appropriate.

William C. Reeves

MORALES • FIERRO • REEVES

2151 Salvio Street, Suite 280

Concord, CA 94520

(925) 288-1776

From: David Sampson [mailto:davidsampsonlaw@gmail.com]

Sent: Friday, January 29, 2021 9:49 AM

To: William Reeves

Subject: Rule 11 issue

The motion to dismiss you filed pursuant to Rule 11 (Document No. 24) states that "the settlement reached between Russo and the HOA before the judgment was entered pursuant to which the liability of both [Duslak and Sesman], if any, as alleged HOA employees is explicitly released."

In support of your assertion you direct the court to the settlement agreement in this matter. Not only does the settlement agreement not "explicitly release" Duslak or Sesman in any capacity, the agreement releases Defendant's employees "EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN". Your statement to the court that the release explicitly releases these gentlemen is false. I am providing you the safe harbor opportunity pursuant to Rule 11 to correct your false statement to the court.

Thank you,

--

David Sampson, Esq.

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

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

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

630 S. 3rd St.

Las Vegas NV 89101

Phone: (702) 605-1099

Fax: (888) 209-4199

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

Thank you.

--

David Sampson, Esq.

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

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

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Thank you.

--

David Sampson, Esq.

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

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

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

Thank you.

1 PROOF OF SERVICE

2 I, William Reeves, declare that:

3 I am over the age of eighteen years and not a party to the within cause.

4 On the date specified below, I served the following document:

5 CONSOLIDATED BRIEF RE: QBE'S MOTION TO INTERVENE TO ENFORCE
6 SETTLEMENT AND PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT

7 Service was effectuated in the following manner:

8 _____ BY FACSIMILE:

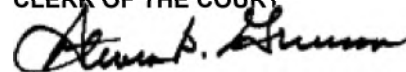
9 XXXX BY ODYSSEY: I caused such document(s) to be electronically served through
10 Odyssey for the above-entitled case to the parties on the Service List maintained on Odyssey's
11 website for this case on the date specified below.

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

13 Dated: February 4, 2021

14 
15 _____
16 William Reeves
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28

Electronically Filed
2/4/2021 1:43 PM
Steven D. Grierson
CLERK OF THE COURT


OPP/RPLY

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E-mail: *ssplaine@lgclawoffice.com*

Attorneys for Defendant,

SUNRISE HOA 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 HOA 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 HOA VILLAS IX
HOMEOWNERS ASSOCIATION'S
CONSOLIDATED OPPOSITION TO
PLAINTIFF'S MOTIONS TO ENFORCE
SETTLEMENT AND REPLY TO QBE'S
MOTION TO ENFORCE**

ORAL ARGUMENT REQUESTED

Defendant, SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION (“SUNRISE”), by and through its counsel of record, the law firm of Springel & Fink LLP and the law firm of Lincoln Gustafson and Cercos, hereby files the following consolidate brief in both opposing Plaintiff’s Motion To Enforce Settlement and requesting that this Court grant QBE’s Motion To “to Enforce the Settlement which SUNRISE formally joined in.

As discussed herein, pending before the Court are the following 3 motions:

1. QBE’s Motion to Enforce Settlement;
2. SUNRISE’s Motion to Set Aside the Judgment; and
3. Plaintiff’s Motion to Enforce Settlement,

Each motion seeks to adjudicate the validity of a Default judgment entered against Duslak and Sesman on December 17, 2019, after the settlement was finalized.

Per the terms of the settlement, Russo agreed to release any and all claims against Duslak and Sesman as SUNRISE employees. *See* Motion to Set Aside Exhibit 1, 37:13-15, 40:4-14; see also exhibits 2-4. Of significance, counsel for SIMONE RUSSO (hereinafter “Plaintiff”) recently affirmed his position. *See* QBE’s Consolidated Briefs, Exhibit C.

In his Motion, Plaintiff attempts to circumvent what he agreed to as part of the written Global Settlement and release by ignoring the fact that Plaintiff agreed that Duslak and Sesman are independent contractors “for the purpose of this litigation and for any and all issues related to Simone Russo’s claims and settlement” and effectively released Duslak and Sesman for any other purposes, including as SUNRISE employees. Plaintiff simply wants this Court to ignore the specific terms that he agreed to both in writing and in open court and to enforce only the very preliminary terms that the parties discussed on the court record on October 18, 2019, which this Court expressly declined to do during hearings on November 7th and 8th, 2019. The Court, instead, opted to see if the parties could work out a written agreement and release instead. (*See* Motion to Set Aside, Exhibits 6 and 4, specifically exhibit 4 pages 42-43, lines 20-25, 1-17). It is this position that serves as the basis for the concerns raised regarding the Default Judgment because the document fails to address that Plaintiff released Duslak and Sesman as SUNRISE employees. *See* Motion to Set Aside, Exhibit 8.

What this Court should enforce is the actual signed Global Settlement agreement between all

parties, including the addendum between Plaintiff and SUNRISE where Plaintiff expressly agreed that for ALL PURPOSES related to this litigation and settlement (which would certainly include the later default judgment and attempts to collect), Duslak and Sesman were SUNRISE's independent contractors, not its employees.

Because the Default Judgment this Court entered does not take into consideration this limitation, it should either vacate or modify the Judgment with the understanding that the latter outcome is problematic because it requires Plaintiff to present evidence as to Duslak and Sesman's conduct that this Court never likely considered and cannot now be considered given that no record exists. *See* Motion to Set Aside, Exhibit 11 attached hereto¹. Alternatively, if there was no meeting of the minds, this Court has the option to set aside the settlement and judgment in their entirety and reset this matter for trial.

This opposition is made and based upon the pleading and papers filed herein, the attached points of Authorities, and any other matter this Court deems appropriate and any allowed oral argument.

DATED this 4th day of February, 2021.

SPRINGEL & FINK LLP

/s/ Leonard T. Fink, Esq.

By: _____

LEONARD T. FINK, ESQ.

Nevada Bar No. 6296

RAVEN M. YIM, ESQ.

Nevada Bar No. 14972

9075 W. Diablo Drive, Suite 302

Las Vegas, NV 89148

Attorneys for Defendant,

*SUNRISE HOA VILLAS IX HOMEOWNERS
ASSOCIATION*

¹ Despite repeated requests, Plaintiff's counsel has refused to produce copies of the documentation he provided to this Court in connection with the Default Judgment.

I. INTRODUCTION

This lawsuit arose from Plaintiff's alleged slip and fall on August 2016 involving a coaxial cable wire installed at a residence he rented in the SUNRISE HOA community. While Plaintiff did not initially name Duslak and Sesman as defendants in the case when he filed suit in 2017, he added each as defendants by way of an amended Complaint filed in 2018. Based on the conclusion that each were independent contractors, coupled with the absence of any allegations made by the Plaintiff to the contrary, SUNRISE did not appear for either individuals.²

The parties reached a Global Settlement in principal in October 2019, which contemplated some type of "carve out" for Plaintiff's claims against Duslak and Sesman. While the attorneys discussed preliminary terms on the record (as noted in Motion to Set Aside in Exhibit 2), every attorney expressly noted that they would be reducing the terms and conditions to writing. COX/IES' attorney specifically stated:

And as before, the settlement will be reduced to a settlement agreement and release.

Page 9, Lines 21-22.

In reliance on the written release, SUNRISE did not oppose Plaintiff's attempts to obtain the Default Judgment against Duslak and Sesman, a copy of which is attached hereto as Exhibit 8. The Default Judgment, however, itself includes no limiting provisions reflecting that Duslak and Sesman's liability is based solely on their conduct as independent contractors. *See* Motion to Set Aside, Exhibit 8.³

In the absence of any limiting verbiage, Duslak and Sesman have now sued SUNRISE contending that each were employees such that SUNRISE is liable and responsible for the judgment. *See* Motion to Set Aside, Exhibit 8. Meanwhile, Plaintiff's Motion to Enforce Settlement is an improper attempt to disavow the stipulation he agreed to by contending that he did not release his claims against Duslak and Sesman in their capacities as SUNRISE's employees.

Based on these circumstances, this Court should set aside the Default Judgment because it likely

² The Amended Complaint omits any allegation that Duslak and Sesman were SUNRISE employees

³ Compounding matters, the docket includes no record of the evidence submitted to substantiate the judgment hearing was not transcribed. *See* Motion to Set Aside Exhibit 9. Given this, the SUNRISE cannot determine the basis for Plaintiff's Judgment against Duslak and Sesman.

expressly violates the terms of the Settlement Agreement. Alternatively, to the extent that Duslak and Sesman face liability arising from their conduct solely as independent contractors, this Court should amend or modify the Default Judgment to reflect these limitations in the interest of judicial economy.

II. **BACKGROUND FACTS**

On October 16 2019, the parties reached a global settlement in principal. *See* transcripts dated October 16, 2019 and October 18, 2019, copies of which are attached as Exhibits 1 and 2 to the separately filed Motion to Set Aside the Judgment. Issues arose, however, in documenting the Global Settlement, leading Plaintiff to file a Motion to Compel Settlement on November 1, 2019. Plaintiff's Motion led to this Court scheduling of two separate hearings for November 7, 2019 and November 8, 2019 during which Plaintiff's claims against Duslak and Sesman were extensively vetted and discussed. *See* Motion to Set Aside, Exhibits 4 and 6. Of significance, the November 7, 2019 transcript includes an extensive discussion between counsel and this Court regarding the fact that Duslak and Sesman were generally not a part of the Global Settlement. In framing the dispute, SUNRISE's counsel advised this Court as follows:

The hold up, and Mr. Sampson I think said it but I'll say it again, I think the real hold up right now is whether or not the release we negotiated was intended to cover Mr. Sesman and Duslak, D-U-S-A-K I think. Actually, I've got it in front of me. Okay. Duslak D-U-S-L-A-K, and Sesman, S-E-S-M-A-N., if they were considered employees of SUNRISE HOA.

There's never been one bit of evidence in this case that they were employees. It was always that they were independent contractors. But, as I'm sure the Court has dealt with thousands of Global Settlements, when you settle with an entity, you are settling with the employees too.

There's nothing in Mr. Sampson's amended complaint that even suggests or asserts that either one of these gentlemen is an employee. There is nothing in any one of his disclosures that asserts they're employees.

So the idea here is that not only is SUNRISE HOA getting itself out of the case but it's also getting out its employees, which also include board members. Although, we didn't specifically say that on the record either, but also Cox IES, they're also getting their employees out.

Motion to Set Aside, Exhibit 4, 16:12-17:25

SUNRISE's counsel further stated:

So, I think that the only hang up is whether or not this Global Settlement includes Mr. Duslak and Mr. Sesman if they are found to be employees on

SUNRISE HOA. And I think that's it.

If they're not and they're independent contractors, then the Global Settlement agreement absolutely does not cover them. Would allow Mr. Sampson to do what he needs to do. ***And even try to go after my client's insurance carriers to see if there is coverage for them as independent contractors. We all agree that – that was one of the things that was important to him. We aren't seeking to release that.*** (Emphasis Added)

But to the extent they're employees, this should cover it. And I think, I think that's really where we are, Judge.

Motion to Set Aside, Exhibit 4, 18:6 – 23, see also 27:6-24.

Plaintiff's counsel initially responded that while he had no evidence that Duslak and Sesman were SUNRISE employees, it was his view that the Global Settlement did not necessarily contemplate the release of them in any capacity. *See* Motion to Set Aside, Exhibit 4, 20:16 – 24:8. In response to this comment, this Court stated as follows:

Because when you look at it from this perspective if there was truly evidence – I mean, this makes perfect sense. If there was evidence that they were employees, there would not have been a default judgment entered against them. There would have been motions to set aside, answers, and the like. And that's pretty much the status of the case because I can't – I can't foresee either Mr. Lemkul or Mr. Fink permitting an employee to be defaulted: right?

Motion to Set Aside, Exhibit 4, 37:4 -12.

In addressing the Court's concerns, Plaintiff's counsel made the following proposal:

Could we perhaps enter a stipulation on the record here and now that for purposes of this litigation they're not employees? (Emphasis Added)

Motion to Set Aside, Exhibit 4, 37:13-15

The proposal led to the following exchange:

MR. FINK: Good, your Honor. Mr. Sampson made an interesting suggestion that I'd like to think about and that may work. That if we say for the purposes of this litigation they weren't employees. That may take care of all of this. I would just need to run that by my people. But that may take care of all of our concerns at that point, then we can – we can be done.

THE COURT: How's that, Mr. Sampson?

MR.SAMPSON: It was my suggestion, so I still totally agree with it.

Motion to Set Aside, Exhibit 4, 40:4-14

In confirming that the proposal contemplated that Plaintiff would retain the right to proceed against Duslak and Sesman solely in their capacity as independent contractors, the Court made the following statement:

THE COURT: And I think he has no problem with that because that was *his* idea, you know, so regarding the fact that if they're independent contractors, there's no waiver of the right to seek coverage for this case. I mean, I get that based upon the insurance policy. And no big deal there.

Motion to Set Aside, Exhibit 4, 41:3-8

The hearing concluded with the Court setting a status check for the following day (November 8, 2019) at 9:30 a.m. in order to afford the parties with time to document the stipulation. *See* Exhibit 6, 42:6-12.

On November 8, 2019 at 8:26 a.m. (before the Status Check), Plaintiff's counsel sent an email (*See* Motion to Set Aside, Exhibit 5) advising that he had made a few minor changes to the proposed release in light of the agreement reached between the parties. The email, counsel for Plaintiff sent, enclosed a copy of a draft Stipulation he was agreeable to that provided as follows:

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 REICHARD DUSLAK AND DEFENDANT JUSTIN SESMAN WERE NATURAL PERSONS WHO WERE IN THE SERVICE OF SUNRISE HOA VILLA IX HOMEOWNERS ASSOCIATION AS INDEPENDENT CONTRACTORS, WHOM SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION COMPENSATED WITH WAGES, AND WHO SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION HAD THE RIGHT TO DIRECT AND CONTROL WHILE DUSLAK AND SESMAN PERFORMED SERVICES FOR SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION...

Motion to Set Aside, Exhibit 5, p 4.

The parties subsequently appeared at the Status Check later that morning. *See* Motion to Set Aside, Exhibit 6. At the hearing, Plaintiff's counsel made the following representation to the Court regarding recent developments:

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So perhaps the Court could say, you know, if Mr. Fink and his client agrees to what Mr. Sampson proposed this morning, and no one else has any objection on this SUNRISE HOA employee Duslak Sesman thing then we'll go ahead and sign what Mr. Sampson proposed this morning. And that is going to be done.

And if for some reason Mr. Fink's client doesn't agree, then we'll do the other proposal Mr. Sampson set up which is we all just release each other pursuant to the terms that were placed on the record on the 16th and 18th which are incorporated by this reference, and we'll just do it that way.

Motion to Set Aside, Exhibit 6, 5:22 – 6:8

In response, the Court made the following comment:

There appears to be a significant probability that based upon the action of the parties, and more specifically Mr. Fink, that we have an agreement in principal as to the language that will be in the agreement. Because, whatever changes were made as it related to the two putative/independent contractor, whatever status they have, apparently is some sort of agreement as the type of language that would be appropriate. And so all we have to do at this point is this: Either it's approved or it's not approved.

Motion to Set Aside, Exhibit 6, 8:3-17.

SUNRISE and QBE ultimately agreed to the revisions, leading to the full execution of the release agreement (including the stipulation) and the disbursement of the proceeds. *See* Motion to Set Aside, Exhibit 7. Based on these circumstances, it is patent and clear that Plaintiff agreed to release Duslak and Sesman for **any** liability arising from their conduct as SUNRISE employees because he agreed to limit his claims to their conduct (if any) as independent contractors.

Plaintiff proceeded to obtain a default judgment against Duslak and Sesman on December 17, 2019. *See* Motion to Set Aside, Exhibit. 8. While the Default Judgment itself includes no limiting verbiage, it appears that the judgment is based on contentions that each were SUNRISE employees as evidence by the following:

1. Plaintiff filed a counterclaim in connection with QBE's coverage action.
See QBE's Motion to Enforce, Exhibits B and C.
2. Duslak and Sesman have filed counterclaims and a Third Party Complaint in the coverage action in which each allege that they face

exposure as former SUNRISE employees. *See* Motion to Set Aside Exhibit 10.

3. Plaintiff has opposed QBE's Motion to Enforce (in which SUNRISE joined) on the basis that he did not release Duslak and Sesman in their capacity as SUNRISE's employees.
4. In Plaintiff's January 19, 2021 Supplement To Opposition To Non-Party QBE Insurance Corporation's Second Motion to Intervene and Motion To "Enforce" Settlement, he asked this Court "to direct its attention to "additional language in the Settlement agreement and release that further specifically demonstrates that SIMONE did not waive *any* rights to pursue all claims against DUSLAK and/or SESMAN, even as employees." Stating further that the Global Settlement excluded Duslak and/or Sesman or anyone associated or affiliated with them including any actual or potential insurer.
5. Plaintiff then filed a Motion to Enforce Settlement on January 22, 2021 on the basis that at the October 18, 2019 hearing, he had only agreed 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".
6. Plaintiff recently filed Plaintiff's Second Supplement to Opposition to Non-Party QBE Insurance Corporation's Second Motion to Intervene and Motion to "Enforce" Settlement on February 1, 2021. He is again claiming that in the November 7, 2019 hearing, he only released Duslak and Sesman to all claims except as to SUNRISE HOA. (*See* Exhibit 12 attached hereto).

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III. POINTS AND AUTHORITIES

A. **There is No enforceable Settlement Based Solely on the October 18, 2019 hearing.**

1. **There is Nothing to Enforce From the October 18, 2019 Hearing Pursuant to EDCR 7.50**

Nevada Courts have continuously held that:

A district court can grant a party's motion to enforce a settlement agreement by entering judgment on the instrument if the agreement is either reduced to a signed writing or entered in the court minutes in the form of an order.

The Power Co. v. Henry, 130 Nev. 182 (2014). *The Power Co.* case cites to *Smith v. Garside*, 81 Nev. 312, 402 P.2d 246 (1965) for support. The court explains that “[i]n *Smith*, although the plaintiff asserted that a settlement was reached, there was no indication that a binding settlement agreement was formed, such as by putting the terms of the agreement into the record or by reducing the agreement to writing.” *Id.* at 321 P.3d 858, 861.

The Court also pointed to EDCR 7.50 to find that “an agreement or stipulation between the parties or their attorneys will not be effective ‘unless the same shall, by consent, be entered in the minutes in the form of an order, or unless the same is in writing subscribed by the party against whom the same shall be alleged, or by the party's attorney’”. *Id.* Thus, “absent an enforceable settlement agreement, the parties’ unconsummated settlement understanding had no effect on the proceedings.” *Id.*

Here, SUNRISE’s counsel did not indicate that it had SUNRISE’s consent to agree to any of the terms that Plaintiff discussed during the October 18th hearing. In fact, SUNRISE’s counsel made this particularly clear during the November 7th hearing when discussing the then-proposed written settlement agreement:

My client has not yet agreed to these terms. I didn’t think it would be a problem, but I wanted to make sure everybody understood that.

Motion to Set Aside Exhibit 4, 15:17-20.

Thus, there is nothing from that hearing to enforce against SUNRISE. Further, this Court never entered this hearing into the Minutes in the form of an order precisely because the parties told it that they would be reducing all terms to writing, which they ultimately did.

2. **The Enforceable Settlement is The Written and Signed Agreement The Hearings Did Not Contain All Material Terms**

SUNRISE and Plaintiff (along with the other defendants), have an actual written and signed agreement. A court should enforce an agreement when the parties agree on all of the material terms. In *May v. Anderson*, 121 Nev. 668, 119 P.3d 1254 (2005) the Court states “...for an enforceable contract, an offer and acceptance, meeting of the minds and consideration...” are the basic contract requirements.

With the respect to contract formation, negotiations do not constitute a binding contract unless the parties have agreed to all ***material*** terms. A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite. A contract can be formed, however, when the parties have agree to the material terms, even though the contract’s exact language is not finalized until later. In the case of a Settlement agreement, a court cannot compel compliance when material terms remain uncertain. *Id.* (Emphasis Added)

None of the participating counsel present in the courtroom on either October 16, 2018 or October 18, 2019 agreed to any material terms save and except their contributions to the settlement. Rather, there were continuing discussions of, among other things, how and to what extent Plaintiff would be able to maintain his claims against Duslak and Sesman. It was only on November 7, 2019 and November 8, 2019 that the parties were able to put the material terms on the record. And this was done specifically in response to this Court urging the parties to reduce their agreement to writing so that it would not have to go to the October 16th and 18th transcripts to enforce potentially nebulous settlement terms. Rather, the Court encouraged the parties to have a written agreement to avoid later appeals, which the parties ultimately were able to accomplish.

Further, during the November 7th hearing, Plaintiff, not SUNRISE, proposed a stipulation that Duslak and Sesman were not employees for the purposes of this litigation, which would mean that he released them for all other roles, including as SUNRISE’s potential employees. Plaintiff and SUNRISE ultimately agreed to this exact stipulation in the Addendum to the settlement agreement.

It would be wrong for this Court to invalidate the written and signed settlement agreement and enforce what Plaintiff alleges was agreed to during the October 16 and 18, 2019 hearings. That alleged agreement was not all inclusive of all material issues of the case.

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a. The Parties Did Ultimately Sign a Written Settlement Agreement

In connection with documenting the settlement, the parties encountered difficulties regarding the scope and extent of the Duslak and Sesman carve out for the written settlement agreement, leading to the hearings on November 7 and November 8, 2019 on Plaintiff's then Motion to Enforce Settlement. The Court was unwilling to then simply order that it would enforce the settlement terms from the prior hearings, and encouraged counsel to work the issues out ourselves.

In his Motion, Plaintiff goes to great lengths to try to demonstrate to the Court that the parties agreed to a very broad release that did not include Duslak and Sesman in any way. What he fails to recognize or simply wants to gloss over, however, was that nowhere in that hearing did SUNRISE ever agree that there would be no limitations on his pursuit of Duslak and Sesman. This is clearly evidenced by the bulk of the discussion between counsel during the November 7, 2019 hearing. The agreement at the October 18, 2019 hearing was that the settlement was only to the parties that were participating in the litigation (and PW James). There was absolutely no discussion as to how the parties were going to deal with Plaintiff's ongoing claims against Duslak and Sesman, which was left to the written agreement.

As noted and specifically discussed during the November 7th hearing, SUNRISE was rightfully concerned with Plaintiff later claiming that Duslak and Sesman were its employees when seeking a judgment.

However, I'm sure the Court can appreciate that even though I'm really, really comfortable with that, I'm also not that comfortable with just leaving it to the wind.

Motion to Set Aside Exhibit 4, page 31-32, lines 23-25, 1.

Plaintiff's counsel then stated in open court:

Could we perhaps enter a stipulation on the record here and now that for purposes of this litigation, they're not employees?

Motion to Set Aside, Exhibit 4, page 37, lines 13-15.

From this springboard, Plaintiff and SUNRISE ultimately agreed in writing to an Exhibit/Addendum to the agreement, that FOR ALL PURPOSES RELATED TO THIS LITIGATION, Duslak and Sesman were independent contractors, not SUNRISE's employees. Thus, to the extent that any of the preliminary terms in the October 1, 2019 hearing differ from this incredibly material term; the Court cannot enforce it because it does not represent the parties' agreement.

b. Plaintiff's Argument in his Second Supplemental Opposition that He Did Not Release SUNRISE's Employees is Incorrect

SUNRISE joins in QBE's objections to Plaintiff's two supplemental Oppositions to its Motion to Enforce as being procedurally improper. Notwithstanding that objection, Plaintiff is "cherry-picking" what language to use and what to ignore. In his January 19, 2021 Supplemental Opposition on page 3, lines 11-18, Plaintiff quotes language from the written agreement that shows that he agreed to release employees for all defendants except SUNRISE. This, however, conveniently ignores the later language in the provision that very superficially modifies the entire release to comport with the stipulation from Exhibit "A" that, again, states very clearly that for the purposes of the litigation and Plaintiff's settlement, Doslak and Sesman are independent contractors.

Plaintiff also repeatedly tries to use SUNRISE's prior response to one interrogatory to support his position that Doslak and Sesman were employees. That response said as follows:

SUPPLEMENTAL RESPONSES TO REQUEST NO. 11:

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

See Exhibit 13 attached hereto.

While it was unfortunate that SUNRISE used the word "employed," it is clear what it meant by this response. It nowhere admitted that they were its employees. In fact, if the Court reviews the other responses to put this in context, this will be abundantly clear. Further, SUNRISE served these responses in March 2018, 4 months before it filed its Motion for Summary Judgment that it was not responsible for Doslak and Sesman's negligence because they were its independent contractors and where it provided a supporting affidavit from the prior property manager on their status. Plaintiff never challenged this assertion at any time (even on SUNRISE's Motion for Reconsideration), and perhaps even waived the argument under EDCR 2.20. But, like everything else in his Motion and 3 Oppositions, he ignores what he does not like.

Thus, there is no question; therefore, that Plaintiff and SUNRISE agreed that Plaintiff released Doslak and Sesman for everything except where they acted as independent contractors. To read the

agreement in any other way does not enforce the parties' intent.

B. If Necessary, This Court Should Set Aside the Entire Settlement as to All Parties Based on Contract Principles.

If this Court is not yet convinced that it should simply enforce the settlement agreement as written, then it should set it aside. A settlement agreement, as noted in the *May* decision, is simply another contract. *Id.* at 672. To that end, a party seeking to avoid enforcement can raise defenses such as unilateral mistake or fraud in the inducement.

Based on his many oppositions, it is clear that Plaintiff's counsel never intended to abide by the stipulation that HE proposed regarding Duslak and Sesman being independent contractors for all purposes related to this litigation and settlement. It seems as if he always intended to argue that other language in the agreement invalidated the Stipulation. He even goes so far as to assert that QBE slipped the "independent contractors" language into the agreement and seeming ignores his own affirmative statement proposing this very same language in open court. If so, then Plaintiff fraudulently induced SUNRISE to agree to these terms and this settlement.

Even if there is no fraud, there is clearly a mutual mistake. If Plaintiff always intended to be able to pursue his claim against Duslak and Sesman as employees, he did not communicate this effectively to SUNRISE. SUNRISE specifically relied on the Exhibit to the settlement agreement that contained the stipulation to enter into the settlement, which would prohibit Plaintiff from pursuing this avenue for relief. Thus, there was a mutual mistake.

If the Court decides that it should rescind the contract based on either of these two principles, then it must do so for all of the parties. SUNRISE never would have agreed to the Motion for Good Faith Settlement or the amount that it ultimately paid in the settlement but for Plaintiff's stipulation. This, therefore, invalidates the entire agreement.

C. The Default Judgment should be set aside or amended to reflect the true intent of the parties thereby alleviating SUNRISE HOA from all liability

The Court ultimately approved Plaintiff's Default Judgment against Duslak and Sesman for \$25,000,000. SUNRISE was not privy to and cannot access the documents related to Default Judgment. SUNRISE is understandably concerned that the Default Judgment entered against Duslak and Sesman

may have been based on them being its employees in direct violation of the written settlement agreement. If so, it exposes SUNRISE to Duslak and Sesman's claims against it in the Federal Court action.

As such, SUNRISE requests this Court to set aside Plaintiff's Default Judgment and find it invalid under NRCP 60.

NRCP 60 provides as follows:

- (a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending such mistake may be corrected only with the appellate court's leave.
- (b) Grounds for Relief From a Final Judgment, Order, or Proceedings. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons.
 - (1) Mistake, inadvertence, surprise, or excusable neglect;
 - (2) Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
 - (3) Fraud (whether previously call intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
 - (4) The judgment is void;
- (c) Other Powers to Grant Relief. This rule does not limit a court's power to:
 - (1) Entertain an independent action to relieve a party from a judgment, order, or proceeding;
 - (2) Upon motion filed within 6 months after written notice of entry of a default judgment is served, set aside the default judgment against a defendant who was not personally served with a summons and complaint and who has not appeared in the action, admitted service signed a waiver of service, or otherwise service; or
 - (3) Set aside a judgment for fraud upon the court.

A judgment is void if there is a defect in the court's authority to enter judgment. *Gossett v. Snappy Car Rental*, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995). A motion brought on the basis that a judgment is void need only be brought within a reasonable time. *In re Harrison Living Trust*, 121 Nev. 217, 220, 112 P. 3d 1058, 1060 (2005). Meanwhile, a trial court retains the inherent power to correct mistakes. *Masi v. Jessop*, 129 Nev. 1136 (2013). The power to correct a judgment extends to instances of fraud. *See*

Murphy v. Murphy, 65 Nev. 264 (1948).

In this case, the Default Judgment is void because it violates the agreed-upon terms of the written settlement agreement. Alternatively, to the extent that Plaintiff possesses the judgment against Duslak and Sesman only as independent contractors, the judgment should, at a minimum, be modified to reflect that it is premised solely on the conduct of Duslak and Sesman as independent contractors and ***not*** as SUNRISE's employees.

SUNRISE does not have any documentation or information related to what Plaintiff submitted for the Default Judgment, so it does to know what happened. Because Plaintiff continuously contends that he is not bound by stipulation that Duslak and Sesman are independent contractors, however, SUNRISE is concerned that the Default Judgment might be void pursuant to NRCP 60(a), (b)(3), (b)(4) and/or (d)(3), if not a total mistake. At this point, SUNRISE is certainly not accusing Plaintiff's counsel of having engaged in any type of fraud. It's just that SUNRISE has no way of knowing what actually did occur without seeing the documents.

V. CONCLUSION

Plaintiff is asking this Court to get another bite of the apple, *per se*, and enforce terms that SUNRISE never agreed to. The terms that the parties agreed to on the record on October 16 and 18, 2019 were not all of the material elements needed to enforce any type of overall agreement. The defendants all stated on the record that they needed to consult their clients before agreeing to terms outside of the settlement amounts.

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On November 7, 2019, Plaintiff became aware of SUNRISE's request to include Duslak and Sesman in any settlement to the extent they were its employees (which it did not believe they were). Plaintiff and SUNRISE ultimately agreed to the Plaintiff's proposed oral stipulation that for the purposes of this litigation both Duslak and Sesman were only independent contractors (See Motion to Set Aside, Exhibit 4 Page 37 L. 13 -15). The Court should either enforce the written agreement between the parties or rescind it in its entirety. If the Court enforces the settlement agreement, then it should either set aside the Default Judgment or modify it to comport to the agreement.

DATED this 4th day of February, 2021.

SPRINGEL & FINK LLP

/s/ Leonard T. Fink, Esq.

By:

LEONARD T. FINK, ESQ.

Nevada Bar No. 6296

RAVEN M. YIM, ESQ.

Nevada Bar No. 14972

9075 W. Diablo Drive, Suite 302

Las Vegas, NV 89148

Attorneys for Defendant,

*SUNRISE HOA 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 **February 4, 2019**, I served the document described as **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** on the following parties:

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

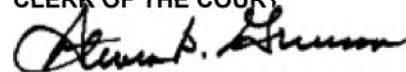
- _____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would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

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Steven D. Grierson
CLERK OF THE COURT



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Attorneys for Defendant
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

DISTRICT COURT
CLARK COUNTY, NEVADA

SIMONE RUSSO,	)	Case No.: A753606
	)	Dept: XVI
Plaintiff,)	
	)	MOTION TO SET ASIDE AND/OR
vs.	)	AMEND JUDGMENT
)	
COX COMMUNICATIONS LAS VEGAS,	)	ORAL ARGUMENT REQUESTED
INC. D/B/A COX COMMUNICATIONS; IES	)	HEARING REQUESTED
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.)	

NOTICE

Defendant Sunrise Villas IX Homeowners Association ("Sunrise HOA") hereby moves this Court for an order either setting aside the default judgment entered in this matter on December 17, 2019 against Richard Duslak ("Duslak") and Justin Sesman ("Sesman") or, in the alternative, amending the judgment to explicitly reflect that liability as to each is based solely on their conduct as independent contractors.

The motion, made pursuant to NRCP 60, is based on the fact that Plaintiff agreed to release Duslak and Sesman from any and all liability arising from their conduct as HOA employees.¹ See

¹ Notwithstanding the fact that neither Duslak nor Sesman were alleged to be HOA employees, the HOA obtained a release of each out of an abundance of caution.

QBE's Motion to Intervene to Enforce previously filed.² As reflected in Plaintiff's Opposition to the Motion to Enforce, Plaintiff is now attempting to disavow himself from the release in contending that he never released his claims against Duslak and Sesman as alleged HOA employees. Meanwhile, Duslak and Sesman themselves have now sued the HOA claiming that the HOA is liable and responsible for the judgment based on the contention that each were HOA employees. See Exhibit 10 attached hereto.

Based on these developments, the judgment should be either set aside in its entirety as void by virtue of the release or, in the alternative, amended to reflect that the liability of Duslak and Sesman is limited and based solely to conduct as independent contractors (to the extent a *prima facie* showing of such can be made).

The motion is made based on this Notice, the points and authorities incorporated herein, the Court's file (including the Motion To Intervene to Enforce Settlement), any other matter this Court deems appropriate and any allowed oral argument.

DATED this 21st day of January, 2020.

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, Nevada 89148
Attorneys for Defendants
*SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION*

MOTION

I. INTRODUCTION

This matter arises from an alleged August 2016 slip and fall involving a coaxial cable wire

² Request is made that this Court take judicial notice of the Motion to Enforce as well as its entire file for this matter. Note that a hearing date for the Motion to Enforce has been set for February 11, 2021.

installed at a residence that Plaintiff contends caused him to trip so as to sustain bodily injuries. In this suit, Plaintiff alleged that Defendant, Sunrise HOA, was liable and responsible for his injuries based on alleged maintenance obligations the HOA ostensibly owed in connection with the area adjacent to the wire.

While Plaintiff did not initially name Duslak and Sesman as defendants in the case when he filed suit in 2017, he added each as defendants by way of an amended Complaint filed in 2018. Based on the conclusion that each were independent contractors, coupled with the absence of any allegations made by Plaintiff to the contrary, the HOA did not appear for either individual such that defaults were entered as to each.³

A settlement was reached in October 2019 which contemplated the carve out of Duslak and Sesman. In connection with documenting the settlement, the parties encountered difficulties regarding the scope and extent of the carve out of Duslak and Sesman, leading to a November 7, 2019 hearing before this Court in connection with a motion to enforce Plaintiff filed. See Exhibits 3, 4.

At the November 7, 2019 hearing, counsel for Plaintiff agreed to stipulate that Plaintiff would release any claims against Duslak and Sesman based on their conduct as employees. By virtue of this stipulation, counsel agreed to narrow Plaintiff's claims against Duslak and Sesman to their conduct (if any) as independent contractors. Of significance, the stipulation was made in open court before subsequently being reduced to writing. See Exhibits 4-7.

In reliance on the release, the HOA did not oppose the entering of a default judgment against Duslak and Sesman on December 17, 2019, a copy of which is attached hereto as Exhibit 8. The default judgment, however, itself includes no limiting provision reflecting that liability is based solely on their conduct as independent contractors. See Exhibit 8.⁴

In the absence of any limiting verbiage, Duslak and Sesman have now sued the HOA contending that each were HOA employees such that the HOA is liable and responsible for the

³ The Amended Complaint omits any allegations that Duslak and Sesman were HOA employees.

⁴ Compounding matters, the docket includes no record of the evidence submitted to substantiate the judgment while the hearing was not transcribed. See Exhibit 9. Given this, the HOA cannot determine the basis for the judgment entered against Duslak and Sesman.

judgment. See Exhibit 10. Meanwhile, counsel for Plaintiff, in connection with a separately filed Motion to Intervene to Enforce Settlement, has now attempted to disavow the stipulation he agreed to by contending that Plaintiff did not release his claims against Duslak and Sesman in their capacities as HOA employees. See Opposition to Motion to Enforce.

Based on these circumstances, it is respectfully submitted that the judgment entered by this Court violates the terms of the settlement agreement such that it is void. Alternatively, to the extent that Duslak and Sesman face liability arising from their conduct solely as independent contractors, the judgment should be amended and modified to reflect this limitation. Accordingly, for the reasons set forth herein, it is respectfully requested that the motion be granted.

II. BACKGROUND FACTS

Per above, this matter arises from an alleged 2016 slip and fall in which Plaintiff alleges the HOA was liable.

In October 2019, a settlement was reached in this case. See Transcripts dated October 16, 2019 and October 18, 2019, copies of which are attached hereto as Exhibits 1 and 2. Issues arose, however, in documenting the settlement, leading Plaintiff to file a Motion To Compel Settlement on November 1, 2019, a copy of which is attached hereto as Exhibit 3.

Plaintiff's Motion led to the scheduling of two separate hearings that were ultimately held on November 7, 2019 and November 8, 2019 during which the claims against Duslak and Sesman were extensively vetted and discussed. See Exhibits 4 and 6. Of significance, the November 7, 2019 transcript includes an extensive discussion between counsel and this Court regarding the fact that Duslak and Sesman were not part of the settlement. In framing the dispute, counsel for HOA advised the Court as follows:

The hold up, and Mr. Sampson I think said it but I'll say it again, I think the real hold up right now is whether or not the release that we negotiated was intended to cover Mr. Sesman and Duslak, D-U-S-L-A-K, I think. Actually, I've got it in front of me. Okay. Duslak, D-U-S-L-A-K, and Sesman, S-E-S-M-A-N, if they were considered employees of Sunrise.

There's never been one bit of evidence in this case that they were employees. It was always that they were independent contractors. But as I'm sure the Court has dealt with thousands of settlements, when you settle with an entity, you are settling with the employees too.

There's nothing in Mr. Sampson's amended complaint that even suggests or asserts that either one of these gentlemen is an employee. There is nothing in any one of his disclosures that asserts they're employees.

So the idea here is that not only is Sunrise getting itself out of the case, but it's also getting out its employees, which also includes board

members. Although, we didn't specifically say that on the record either, but also Cox, IES, they're also getting their employees out.

Exhibit 4, 16:12-17:25

Counsel for the HOA further stated as follows:

So I think that the only hang up is whether or not this settlement includes Mr. Duslak and Mr. Sesman if they are found to be employees of Sunrise. And I think that's it.

If they're not and they're independent contractors, then the settlement agreement absolutely does not cover them. Would allow Mr. Sampson to do what he needs to do. And even try to go after my client's insurance carriers to see if there is coverage for them as independent contractors. We all agree that -- that was one of the things that was important to him. We aren't seeking to release that.

But to the extent they're employees, this should cover it. And I think, I think that's really where we are, Judge.

Exhibit 4, 18:6-23, see also 27:6-24.

Counsel for Plaintiff initially responded that while he had no evidence existed that Duslak and Sesman were HOA employees, it was his view that the settlement did not necessarily contemplate the release of them in any capacity. See Exhibit 4, 20:16-24:8. In response to this comment, this Court stated as follows:

Because when you look at it from this perspective if there was truly evidence -- I mean, this makes perfect sense. If there was evidence that they were employees, there would not have been a default judgment entered against them. There would have been motions to set aside, answers, and the like. And that's pretty much the status of the case because I can't -- I can't foresee either Mr. Lemkul or Mr. Fink permitting an employee to be defaulted; right?

Exhibit 4, 37:4-12.

In addressing this Court's concerns, counsel for Plaintiff made the following proposal:

Could we perhaps enter a stipulation on the record here and now that for purposes of this litigation they're not employees?

Exhibit 4, 37:13-15.

The proposal led to the following exchange:

MR. FINK: Good, your Honor. Mr. Sampson made an interesting suggestion that I'd like to think about and that may work. That if we say for the purposes of this litigation they weren't employees. That may take care of all of this. I would just need to run that by my people. But that may take care of all of our concerns at that point, and then we can -- we can be done.

THE COURT: How's that, Mr. Sampson?

MR. SAMPSON: It was my suggestion, so I still totally agree with it.

Exhibit 4, 40:4-14.

In confirming that the proposal contemplated that Plaintiff would retain the right to proceed against Duslak and Sesman solely in their capacity as independent contractors, the Court made the following statement:

THE COURT: And I think he has no problem with that because that was his idea, you know, so regarding the fact that if they're independent contractors, there's no waiver of the right to seek coverage for this case. I mean, I get that based upon the insurance policy. And no big deal there.

Exhibit 4, 41:3-8.

The hearing concluded with the Court setting a status check for the following day (November 8, 2019) at 9:30 a.m. in order to afford the parties with time to document the stipulation. See Exhibit 4, 42:6-12.

On November 8, 2019 at 8:26 a.m. (before the Status Check), counsel for Plaintiff sent an email (a copy of which is attached hereto as Exhibit 5) advising that he had made a few minor changes to the release in light of the agreement reached between the parties. The email counsel for Plaintiff sent enclosed copy of a draft Stipulation he was agreeable to that provided as follows:

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 WITH WAGES, AND WHOM SUNRISE VILLAS IX HOMEOWNERS

ASSOCIATION HAD THE RIGHT TO DIRECT AND CONTROL
WHILE DUSLAK AND SESMAN PERFORMED SERVICES FOR
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION.. .

Exhibit 5, p 4.

The parties subsequently appeared at the Status Check later that morning. Exhibit 6. At the hearing, counsel for Plaintiff made the following representation to the Court regarding recent developments:

So perhaps the Court could say, you know, if Mr. Fink and his client agree to what Mr. Sampson proposed this morning, and no one else has any objection on this Sunrise employee Duslak Sesman thing then we'll go ahead and sign what Mr. Sampson proposed this morning. And that's going to be done.

And if for some reason Mr. Fink's client doesn't agree, then we'll do the other proposal Mr. Sampson set up which is we all just all release each other pursuant to the terms that were placed on the record on the 16th, and 18th which are incorporated by this reference, and we'll just do it that way.

Exhibit 6, 5:22-6:8

In response, the Court made the following comment:

There appears to be a significant probability that based upon the action of the parties, and more specifically Mr. Fink, that we have an agreement in principle as to the language that will be in the agreement. Because whatever changes were made as it related to the two putative/independent contractor, whatever status they have, apparently there is some sort of agreement as the type of language that would be appropriate. And so all we have to do at this point is this: Either it's approved or it's not approved.

If it's approved, then we're done. There's no need for law and motion. There's no need for any decisions from me. I would anticipate the checks would be exchanged shortly.

Exhibit 6, 8:3-17.

The HOA and its insurer ultimately agreed to the revisions, leading to the full execution of the release agreement (including the stipulation) and the disbursement of the proceeds. See Motion, Ex. 7. Based on these circumstances, it is patent and clear that Plaintiff agreed to release Duslak and Sesman for any liability arising from their conduct as HOA employees such that the claims against each were limited to their conduct (if any) as independent contractors.

Plaintiff proceeded to obtain a default judgment against Duslak and Sesman on December 17,

2019. See Exhibit 8. While the judgment itself includes no limiting verbiage, it is now evident that the judgment is based on contentions that each were HOA employees as evidenced by the following:

- Plaintiff filed a counterclaim in connection with a coverage action the insurer for the HOA filed in which Plaintiff asserted that the insurer was liable and responsible for the judgment. See QBE's Motion To Enforce, Exhibits B and C.
- Duslak and Sesman have filed counterclaims in the coverage action in which each allege that they face exposure as former HOA employees. See Exhibit 10.
- Plaintiff has opposed QBE's Motion To Enforce (in which the HOA joined) on the basis that he did not release Duslak and Sesman in their capacity as HOA employees.

III. DISCUSSION

NRCP 60 provides as follows:

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief From a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than 6

months after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) upon motion filed within 6 months after written notice of entry of a default judgment is served, set aside the default judgment against a defendant who was not personally served with a summons and complaint and who has not appeared in the action, admitted service, signed a waiver of service, or otherwise waived service; or

(3) set aside a judgment for fraud upon the court.

A judgment is void if there is a defect in the court's authority to enter judgment. *Gossett v. Snappy Car Rental*, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995). A motion brought on the basis that a judgment is void need only be brought within a reasonable time. *In re Harrison Living Trust*, 121 Nev. 217, 220, 112 P.3d 1058, 1060 (2005).

Meanwhile, a trial court retains the inherent power to correct mistakes. *Masi v. Jessop*, 129 Nev. 1136 (2013). The power to correct a judgment extends to instances of fraud. See *Murphy v. Murphy*, 65 Nev. 264 (1948)

In this case, the judgment is void as it violates the agreed-upon terms of the settlement reached in this case. Plaintiff released his claims against Duslak and Sesman based on their conduct as HOA employees. As Plaintiff erroneously contends he is not bound by the release, the judgment should be set aside as void pursuant to both NRCP 60(b)(4) and (d)(3).

Alternatively, to the extent that Plaintiff possesses meritorious claims against Duslak and Sesman as independent contractors (for which no record exists), the judgment should, at a minimum, be modified per NRCP 60(a), (b)(4) and/or (d)(3) to reflect that it is premised solely on the conduct of Duslak and Sesman as independent contractors and not employees.

///

///

IV. **CONCLUSION**

For the reasons set forth herein, request is made that this motion be granted and that the judgment be set aside or, in the alternative, amended.

DATED this 21st day of January, 2020.

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, Nevada 89148
 Attorneys for Defendants
*SUNRISE VILLAS IX HOMEOWNERS
 ASSOCIATION*

SUPPORTING DECLARATION

I, Leonard Fink, declare as follows:

1. I am an attorney with Springel & Fink, counsel for Sunrise HOA.
2. The factual information contained herein is true and correct based on my own personal knowledge.
3. Attached hereto are true and correct copies of the following:

Exhibit 1	Transcript of October 16, 2019 Hearing
Exhibit 2	Transcript of October 18, 2019 Hearing
Exhibit 3	Motion To Compel Settlement filed on November 1, 2019
Exhibit 4	Transcript of November 7, 2019 Hearing
Exhibit 5	November 8, 2019 Email Correspondence
Exhibit 6	Transcript of November 8, 2019 Hearing
Exhibit 7	Release Agreement
Exhibit 8	Default Judgment filed on December 17, 2019

Exhibit 9 Minutes of proceedings on December 17, 2019

Exhibit 10 Counterclaim filed by Duslak and Sesman.

I declare that the foregoing is true and correct based on my own personal knowledge.

Executed in Las Vegas, Nevada on the date specified below.

Dated: this 21st day of January, 2020.

/s/ Leonard T. Fink, Esq.

By:

LEONARD T. FINK, ESQ.

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 21, 2021**, I served the document described as **MOTION TO SET ASIDE AND/OR AMEND JUDGMENT- ORAL ARGUMENT REQUESTED HEARING REQUESTED** on the following parties:

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

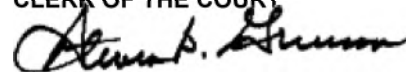
- _____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am “readily familiar” with the firm’s practice of collection and processing correspondence by mailing. Under that practice, it would 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
2/1/2021 10:31 AM
Steven D. Grierson
CLERK OF THE COURT


SUPP

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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.)

**PLAINTIFF'S SECOND SUPPLEMENT TO 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 again supplements his opposition to the motions filed by non-party QBE Insurance Corporation ("QBE"), to intervene in this matter and "enforce settlement", which were joined by SUNRISE.

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

POINTS AND AUTHORITIES

QBE's motion asserts that "Plaintiff agreed in connection with a settlement reached in this case that he would limit his claims against Richard Duslak and Justin Sesman to liability solely arising from their (sic) as independent contractors". See QBE's motion at P. 1 L. 24-27. In addition to the evidence and arguments set forth in the opposition and initial supplement, SIMONE also directs this Court to the transcript from the November 7, 2019 hearing in this matter wherein it is made clear that 1) it was QBE's insured SUNRISE, through its tripartite counsel, that represented to SIMONE and the Court that DUSLAK and SESMAN were not employees, 2) SIMONE agreed to so stipulate that DUSLAK and SESMAN were independent contractors based on SUNRISE's representations, and 3) SIMONE again specifically reserved all rights to pursue DUSLAK and SESMAN as individuals no matter whether they were employees of contractors.

Attached hereto as Exhibit "1" is the transcript from the November 7, 2019 hearing in this matter. On October 18, 2019 the parties to the settlement had previously placed on the record that the settlement would not affect any of SIMONE's rights against DUSLAK and/or SESMAN. See Exhibit "3" to SIMONE's Opposition to the instant motion. At a subsequent hearing on November 7, 2019 David Sampson, Esq., counsel for SIMONE, reminded the Court of the agreement that had been previously put on the record. Mr. Sampson stated that in confirming the settlement in this matter, "we put on the record -- *we're not waiving, releasing, or otherwise affecting anything against Sesman or Duslak*. I don't think anyone would dispute

that . . . it was a pretty significant point that day.” *See* Exhibit “1” attached hereto at P. 25 L. 6-16 (emphasis added). The Court then asked SUNRISE’s counsel, “Mr. Fink, are we disputing that?” *Id* at P. 25 L. 21-22. Mr. Fink answered, “My best recollection is that *when Mr. Sampson said he was specifically retaining his rights to go against Mr. Sesman and Mr. Doslak, we all agreed to that.*” *Id* at P. 26 L. 2-5 (emphasis added).

It was QBE and SUNRISE, via their tripartite counsel Mr. Fink, who represented to SIMONE and to the Court that DUSLAK and SESMAN were not employees of SUNRISE. In the November 7, 2019 hearing Mr. Fink stated, “There’s never been one bit of evidence in this case that they were employees. It was always that they were independent contractors.” *Id* at P. 16 L. 20-22. Mr. Sampson responded, “I don’t think they are employees either as I sit here right now. But I’ve not had a chance to find any of that stuff out. I have not – I have no confirmation as to any of that.” *Id* at P. 21 L. 23 – P. 22 L. 1.

Mr. Sampson then discussed the very circumstance QBE and SUNRISE currently face, that being that evidence may one day come to light that DUSLAK and SESMAN were in fact SUNRISE employees and that SUNRISE’s representations to SIMONE and to the Court were incorrect. Mr. Sampson discussed the possibility that SUNRISE was incorrect and how under that circumstance DUSLAK and SESMAN would still be liable under the Judgment if “Something goes on and all of a sudden that all -- that they come up W-2s that were not provided before and Mr. Fink's not aware of, and then we've somehow been misled.” *Id* at P. 29 L. 12-14. Mr. Sampson was adamant that under that circumstance SIMONE would still retain all rights to any judgment the Court may enter against DUSLAK and/or SESMAN. *Id* at P. 40 L. 16-22.

Mr. Sampson ultimately offered, given SUNRISE's representations that DUSLAK and SESMAN were not SUNRISE, employees, to simply stipulate that judgment would be taken against them individuals as SUNRISE asserted they were independent contractors. Mr. Sampson stated, "Could we perhaps enter a stipulation on the record here and now that for purposes of this litigation they're not employees?" *Id* at P. 37 L. 13-15. Mr. Fink then stated he would "like to think about" that suggestion and said, "That may take care of all of this." *Id* at P. 40 L. 4-8.

After suggesting the parties stipulate that DUSLAK and SESMAN were not employees, and Mr. Fink saying he would "like think about" that, Mr. Sampson stated, "I would ask -- I would ask just -- Mr. Fink has made a couple of comments today, and I think the Court also echoed them, along the lines of Sesman and Duslak, *all rights against them*, anybody who insures them, you know, *all of those are preserved. They're not affected. I would like to make sure that is crystal clear in whatever iteration we end up with.*" *Id* at P. 40 L. 16-22 (emphasis added).

As noted in SIMONE's Opposition to the instant motion, the agreement that SUNRISE did make it "crystal clear" that SIMONE was preserving all rights to proceed against DUSLAK and SESMAN, and that neither DUSLAK and/or SESMAN were being released even in the event they were subsequently deemed employees. *Indeed, the settlement agreement specifically excluded SUNRISE employees entirely.* See Supplement to Opposition. On page 4 of the release, the description of the released parties includes all of Defendants' "employees *EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN . . .*". See Exhibit "4" to SIMONE's opposition to the instant motion at P. 4 (emphasis in original). When referencing the employees of any of the Defendants it was made more than clear that the term "employees"

did not include DUSLAK or SESMAN, and that DUSLAK nor SESMAN were being released, even if they were deemed employees of SUNRISE.

If evidence has now come to light that SUNRISE's representations to SIMONE and to the Court were incorrect, SUNRISE and/or its insured(s) will have to face the consequence for the same. At no time was it ever agreed that SIMONE would lose any rights against DUSLAK and/or SESMAN if it turned out SUNRISE's representations to the Court were incorrect.

CONCLUSION

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 again confirmed on November 7, 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.

DATED this 1st day of February, 2021.

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ David Sampson

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

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Fax No: 888-209-4199

Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, LLC., and that on this 1st day of February, 2021, I served a copy of the foregoing **SECOND SUPPLEMENT** on all the remaining parties in this matter via the court's electronic online filing system and as follows:

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Insurance Corporation

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Counsel for SUNRISE

And

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

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

EXHIBIT “1”

NOVEMBER 7, 2019

RUSSO V. COX COMMUNICATIONS

1

1 CASE NO. A-17-753606-C

2 DOCKET U

3 DEPT. XVI

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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* * * * *

9 SIMONE RUSSO,

10 Plaintiff,

11 vs.

12 COX COMMUNICATIONS LAS VEGAS,

13 Defendant.

14

REPORTER'S TRANSCRIPT
OF
HEARING

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16
17 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

18

DISTRICT COURT JUDGE

19

20 DATED THURSDAY, NOVEMBER 7, 2019

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22

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

24

25

NOVEMBER 7, 2019

RUSSO V. COX COMMUNICATIONS

2

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BY: DAVID F. SAMPSON, ESQ.

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Pursuant to NRS 239.053, illegal to copy without payment.

NOVEMBER 7, 2019

RUSSO V. COX COMMUNICATIONS

3

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Pursuant to NRS 239.053, illegal to copy without payment.

NOVEMBER 7, 2019

RUSSO V. COX COMMUNICATIONS

4

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Pursuant to NRS 239.053, illegal to copy without payment.

1 LAS VEGAS, NEVADA; THURSDAY NOVEMBER 7, 2019

2 12:01 P.M.

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

4 * * * * *

5
6 MR. SAMPSON: This is David Sampson.

7 THE COURT: All right. Mr. Sampson, good
8 morning.

9 MR. SAMPSON: Good morning.

10 THE COURT: And...

11 MR. LEMKUL: Good morning, your Honor. Judge,
12 Will Lemkul here.

13 THE COURT: All right. Good morning. And I
14 see we have plaintiff's motion to compel settlement on
15 an order shortening time.

16 MR. SAMPSON: Yes, Judge, thank you. So we
17 were -- the Court is, I'm sure -- well remembers this
18 case. We were in front of your Honor three weeks ago
19 now on Wednesday initially. And we put the settlement
20 on the record and the terms of the settlement on the
21 record. We came back on Friday, found out that the two
22 other -- two other defendants who on Wednesday said
23 they hadn't gotten any confirmation from their client
24 yet because it had just kind of happened and that whole
25 thing. They wanted to check with their clients, call

Peggy Isom, CCR 541, RMR

(702)671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

12:01:56 1 back on Friday, and confirmed their client did agree to
2 do the settlement. And so under those terms -- a
3 couple of the terms, one was that --

4 (Reporter clarification)

12:02:06 5 MR. SAMPSON: Two of the defendants who were
6 named in the case who have never filed answers, who
7 have been defaulted were not affected by the
8 settlement, with the money that was being paid.

9 THE COURT: And...

12:02:17 10 MR. SAMPSON: And my clients rights --

11 THE COURT: And Mr. Sampson, I don't want to
12 cut you off. But please identify the two defaulted
13 defendants again for the record.

14 MR. SAMPSON: Duslak and Sesman are the last
15 names.

16 THE COURT: Thank you, sir. You may continue.

17 MR. SAMPSON: So then Dr. Russo's rights
18 against those two defaulted individuals would not be
19 affected at all. Everyone agreed. And then the
12:02:41 20 comment was made that the provisions of the settlement
21 would be reduced to a writing and released. Then we
22 would sign off on. And the money would be paid to my
23 client within two weeks of the release being signed.

24 So I raised two issues when the release was
12:02:58 25 brought up. I said, number one, we agreed there is

12:03:01 1 going to be nothing in the release that's not agreed to
2 on the record today. There's not going to be any new
3 terms or new anything going on. And it's going to
4 comport with -- the release will comport with what
12:03:11 5 we've agreed to on the record today. Everyone agreed
6 that was the case. No problem. Not an issue.

7 The next thing I say is this idea that the
8 money will be paid within two weeks of release being
9 signed. I then said, well, I don't want the release to
12:03:27 10 take, you know, two weeks to get to me and then two
11 more weeks before you sign it. And so a month out and
12 we still don't have our money.

13 And the comments from the defense were, of
14 course, we'd never do that. Mr. Sampson, don't be
12:03:40 15 ridiculous. Why you got to always assume the worse,
16 that whole thing.

17 Yet here we sit three weeks later now. We're
18 three weeks and a day from Wednesday, and tomorrow is
19 two weeks from the Friday, and I don't have a release
12:03:53 20 that I can have my client sign to get the money. I did
21 get -- which we resolved it on Friday, I want to say
22 the 18th, on Monday, Mr. Fink sent an email over, and
23 he said here is the release that he had typed up. He
24 made no bones about it. Sunrise does not agree and has
12:04:11 25 not authorized this to be a release we can use in the

12:04:14 1 case.

2 And if we stand here today, we still don't
3 have anything from Sunrise that agrees we can use to
4 resolve the case.

12:04:21 5 I sent out some changes to what Mr. Fink
6 provided and asked for comment. I did get word from
7 Mr. Bushbaker's counsel, Mr. Meloro, to have some
8 rather insignificant changes we needed to make that
9 didn't affect any substance. I incorporated those
12:04:38 10 changes. And asked Cox, IES, Sunrise, anybody for
11 Mr. Scarcelli, anybody else have comments. I heard
12 nothing until the following Monday.

13 So on the following Monday I said, all right,
14 it's been a week that Mr. Fink provided this. And I
12:04:54 15 sent back my changes. I've heard nothing from anybody.
16 So I assume what I sent back was going to work and have
17 my client sign it. He expected his money in two weeks.

18 And then all of a sudden within like 15
19 minutes, I heard from Mr. Fink, oh, no, Sunrise hasn't
12:05:09 20 agreed yet. We told you we don't agree. We don't --
21 I'll pass it by to take a look at. Cox sent back word
22 very quickly from Mr. Turtzo, Oh, no, Cox hasn't
23 agreed. And I essentially wrote back and said, Well,
24 then get your clients to agree. I mean, what's he --
12:05:23 25 let me know what changes you have because it's -- I've

12:05:25 1 waited a week very patiently. I don't want this to
2 stall out. Because my client's losing patience. We
3 don't have anything for him to authorize.

4 We need to get this taken care of. I
12:05:36 5 ultimately did get comments from Cox, and we've
6 incorporated the changes they want. My understanding,
7 although Mr. Meloro would have to address this, my
8 understanding from the communications I received from
9 Mr. Meloro because he sent something a week ago Tuesday
12:05:52 10 saying, is this that Mr. Sampson sent out something we
11 can have my client sign and conclude. So I don't think
12 there is any additional issues.

13 I've not heard from Scarcelli's counsel other
14 than it was a side question about renters insurance,
12:06:05 15 and there isn't any. So I think, but I've not heard
16 conclusively, that Mr. Scarcelli is on board with what
17 I sent over.

18 But Sunrise now, between a week ago Tuesday
19 and Thursday, Mr. Fink and I were sending things back
12:06:23 20 and forth. What we're looking at is, again, we want to
21 preserve all rights against the defaulted defendants,
22 just like we said on the record. And the release that
23 was provided defines Sunrise as all employees,
24 independent contractors. It lays out other things that
12:06:40 25 could potentially include Duslak and Sesman.

12:06:44 1 So I included in there that we are not going
2 to include them specifically or anyone affiliated with
3 them. And I think, as I understand it, Sunrise no
4 longer agrees. So as of last Thursday, Halloween, was
12:06:57 5 my last conversation with Mr. Fink until yesterday.
6 And I've been calling every day since then trying to
7 work all this out. I got no response at all.
8 And so I did, when I didn't get it worked out
9 on Halloween, filed this motion. Let's get it in front
12:07:12 10 of the judge. It's been -- it's been silence since
11 then until yesterday. And even yesterday Mr. Fink on
12 the phone as we were talking sounded like maybe we
13 could work something out, but he sent over some
14 proposed language even this morning that, again, says
12:07:27 15 Seslak and Dusman [sic] are to be dismissed if it turns
16 out they're employees, for example, of Sunrise. Which
17 we -- so I sent something over yesterday. And I'll
18 just read it to the Court.
19 My email says: "It appears what I sent
12:07:44 20 earlier --" Well, I sent something over. I'm sorry.
21 I sent something over where I proposed since we haven't
22 got an agreement yet -- the problem was the first one I
23 sent over was red lined. So I said, it was so
24 ridiculously red lined that it looks like the actual
12:07:58 25 language I proposed didn't go through. But here is

12:08:01 1 what I propose our release should say.

2 Settlement release agreement. And it
3 identifies each party by name. Dr. Russo, Sunrise,
4 IES, Cox, PWJames, Kevin Bushbaker, Chris Scarcelli
12:08:16 5 hereby agree to settle the disputes between them and
6 release each other pursuant to the terms set forth on
7 the record on October 16 and October 18, 2019, in case
8 number, and I laid the case number out, pending in the
9 Eighth Judicial District, Clark County, Nevada, which
12:08:34 10 terms are incorporated herein by this reference.

11 And everybody signed it. And says it seems to
12 me to be the best way if, as we agreed, the release
13 isn't -- isn't any different than what was confirmed on
14 the record, all rights are going to be given in the
12:08:49 15 release nor taken away from the release than what was
16 confirmed on the record. This is really the only way
17 to do it.

18 And I have gotten a response I think from Cox
19 that they're not agreeable. I assume given I was given
12:09:02 20 the proposed changes from Mr. Fink perhaps they're not
21 agreeable either. But, you know, we really don't need
22 a release because, as your Honor pointed out a couple
23 times in voir dire, this case is pending a long time.
24 Happened back in October of 2016. And there is no
12:09:20 25 statute of limitations long run at this point in time.

12:09:22 1 So there really is no reason for a release. I
2 have no problem putting one -- or signing off on one as
3 long as it does two things:

4 One, doesn't delay my client getting his money
12:09:34 5 which now, it has;

6 And two, strictly comports with what was
7 placed on the record which the release I've now just
8 read into the record absolutely would do.

9 And if that are not agreeable, then I don't
12:09:46 10 know. I would ask the Court either enforce the
11 settlement and say, you know, since there was radio
12 silence regarding the release, I'm not going to require
13 one anymore. Or I will require one, but it's just
14 going to say what Mr. Sampson pointed out that you're
12:10:00 15 settling the case pursuant to the terms that were
16 placed on the record.

17 I've also given -- suggested a third option
18 that I'll now suggest to the Court that perhaps we just
19 print up the record, both days, and all the parties
12:10:13 20 sign it. And go, so agreed. And we're all released
21 pursuant to what this document says.

22 But what I don't want to do is keep spinning
23 my wheels with the parties with the defendants that's,
24 number one, going to delay my client getting his money.
12:10:27 25 And number two, potentially would add or takeaway from

12:10:31 1 the rights and claims that the parties agreed with not
2 be released or otherwise affected when we put this all
3 on the record.

4 So I'm just reaching out to the Court. I do
12:10:43 5 understand that the check from Sunrise is now in
6 Las Vegas. I understand the Cox one is either here or
7 should be here shortly. So I want to get my client his
8 money as we agreed to three weeks ago. I want to put
9 this thing to bed without waiving any rights other than
12:10:59 10 those that were specifically put on the record. So I
11 would ask for instruction or direction from the Court
12 on how we can best do that, please.

13 THE COURT: Okay. Thank you, sir.

14 MR. CLARK: If it please the Court, David
12:11:13 15 Clark for Chris Scarcelli. Mr. Sampson is right. We
16 did have a side issue on the additional insured
17 provision of the lease agreement.

18 Last week we got communications from
19 Mr. Sampson on that issue. And I can now say that my
12:11:29 20 client is going to go forward and just sign off on a
21 complete release and settlement.

22 THE COURT: Okay.

23 MR. CLARK: And if that's -- so I'm not really
24 involved in the other issues. I don't think my client
12:11:39 25 is going to pay me for this appearance now. But if it

12:11:42 1 please the Court, I have another appearance I need to
2 make. So if I'm not needed, and I don't know if
3 Mr. Sampson still needs me, but Mr. Scarcelli says
4 he'll just sign it when it's in final form.

12:11:56 5 THE COURT: I understand. And we don't need
6 you, sir, I don't think.

7 MR. CLARK: Okay. I'll take my leave now.
8 Thank you all.

9 MR. FINK: Your Honor, Leonard Fink for
12:12:03 10 Sunrise.

11 Mr. Sampson's recitation of what happened
12 since the Friday when we put the settlement on the
13 record is mostly correct. I want to throw in a few
14 things that I think are important here.

12:12:18 15 Number one is that I got everybody the
16 release, the proposed. And we said although we were
17 putting this on the record it was very clear that we
18 were going to be putting together an actual settlement
19 agreement.

12:12:32 20 I don't remember if that part was on the
21 record. I think it was. Mr. Lemkul might remember
22 that differently, but I do.

23 However, I did that Sunday night. And if
24 anybody knows me, the fact that I actually did it that
12:12:43 25 quickly shows that I was trying to be a person of my

12:12:46 1 word and get this done for Mr. Sampson. Especially
2 because I knew that his client -- that he was having
3 issues with that.

4 So I got that done. I sent it out either
12:12:55 5 Sunday night or early Monday morning. I did in the
6 email say my client had not yet agreed to the terms.
7 The reason is that I had a case with then Judge Bayliss
8 where a plaintiff went in to enforce the settlement
9 that was based upon terms that were negotiated between
12:13:09 10 counsel. And the reason the court enforced the
11 settlement, even though my client had not agreed to it,
12 was because counsel had agreed to it and he thought
13 that that was good enough.

14 So since that time, I made sure that unless my
12:13:21 15 client has absolutely signed off on it, every email
16 that goes out when we're talking about settlement
17 agreements, make sure it's clear. My client has not
18 yet agreed to these terms. I didn't think it would be
19 a problem, but I wanted to make sure everybody
12:13:33 20 understood that.

21 So I sent that out again either Sunday night
22 or early Monday morning waiting to hear back from
23 people as to what changes they were going to want, so
24 that we can get a final agreement, so then we can get
12:13:43 25 our respective clients to sign off on it.

12:13:46 1 And I don't recall, and I think Mr. Sampson is
2 probably correct. I think the next thing we probably
3 heard was maybe that next Friday. And then there was
4 some back and forth up until Thursday which was the
12:13:56 5 October 31, which is Halloween.

6 I got sick on Thursday, Friday. Then I had a
7 deposition on Monday which is why I never responded to
8 Mr. Sampson's phone calls. Again, I explained that to
9 him when I talked to him. So I wasn't shining him on
12:14:09 10 or anything like that. I just literally got sick and
11 wasn't do anything.

12 So we resumed trying to get this done. The
13 hold up, and Mr. Sampson I think said it but I'll say
14 it again, I think the real hold up right now is whether
12:14:24 15 or not the release that we negotiated was intended to
16 cover Mr. Sesman and Duslak, D-U-S-L-A-K, I think.
17 Actually, I've got it in front of me. Okay. Duslak,
18 D-U-S-L-A-K, and Sesman, S-E-S-M-A-N, if they were
19 considered employees of Sunrise.

12:14:43 20 There's never been one bit of evidence in this
21 case that they were employees. It was always that they
22 were independent contractors. But as I'm sure the
23 Court has dealt with thousands of settlements, when you
24 settle with an entity, you are settling with the
12:14:57 25 employees too.

12:14:58 1 There's nothing in Mr. Sampson's amended
2 complaint that even suggests or asserts that either one
3 of these gentlemen is an employee. There is nothing in
4 any one of his disclosures that asserts they're
12:15:09 5 employees.

6 So the idea here is that not only is Sunrise
7 getting itself out of the case, but it's also getting
8 out its employees, which also includes board members.
9 Although, we didn't specifically say that on the record
12:15:22 10 either, but also Cox, IES, they're also getting their
11 employees out.

12 In fact, the gentleman Curtis, I think
13 was always the name that came up. But, again, that
14 wasn't specifically on the record. So I think it's an
12:15:34 15 understood term. When you're getting an entity out
16 that includes their employees. If somebody is saying
17 that somebody acted within the course and scope of
18 their employment, unless you're saying they weren't
19 acting within the course and scope of employment,
12:15:45 20 which, again, wasn't an issue in the case because it
21 was never made an issue in the case.

22 So to the extent this is what we were trying
23 to do with the settlement agreement, and Mr. Sampson is
24 right, I did throw in independent contractors in the --
12:15:55 25 in one of the versions of the draft. But as of this

12:15:59 1 morning, I sent out something that I intended to send
2 out before the hearing and realized when I was talking
3 to Mr. Clark when I got here that I didn't press send
4 on my computer. So I think I sent it out maybe 9:15,
12:16:10 5 maybe 9:30 this morning.

6 So I think that the only hang up is whether or
7 not this settlement includes Mr. Duslak and Mr. Sesman
8 if they are found to be employees of Sunrise. And I
9 think that's it.

12:16:23 10 If they're not and they're independent
11 contractors, then the settlement agreement absolutely
12 does not cover them. Would allow Mr. Sampson to do
13 what he needs to do. And even try to go after my
14 client's insurance carriers to see if there is coverage
12:16:38 15 for them as independent contractors. We all agree
16 that -- that was one of the things that was important
17 to him. We aren't seeking to release that.

18 But to the extent they're employees, this
19 should cover it. And I think, I think that's really
12:16:48 20 where we are, Judge. And, of course, I'd certainly
21 leave it up to Mr. Bushbaker's counsel -- I think I
22 always stumble on your name -- sorry, Joe -- and
23 Mr. Lemkul for anything else.

24 THE COURT: Okay. Anything you want to add?

12:17:01 25 MR. MELORO: Joseph Meloro on behalf of Kevin

12:17:04 1 Bushbaker. Your Honor, Mr. Fink did prepare a release
2 agreement that Sunday evening. During that week I made
3 some minor requests for some changes. I've been trying
4 to cooperate through this whole matter.

12:17:19 5 You know, the issues that's going on between
6 Mr. Sampson and Mr. Fink really have nothing to do with
7 my client. I just want to make sure that we're not
8 releasing anyone who wasn't a party to this action that
9 we might have some claims against in the future.

12:17:36 10 But I don't see that in the agreement that was
11 presented, if that's the case at this point. But we're
12 trying to get this along just as much as everyone else,
13 your Honor.

14 THE COURT: I understand.

12:17:48 15 Mr. Lemkul.

16 MR. LEMKUL: Yeah, your Honor, how are you?

17 THE COURT: Good.

18 MR. LEMKUL: Good, good. So the position of
19 Cox and IES, your Honor, is basically we sent back
12:17:59 20 changes to Mr. Sampson that were incorporated into the
21 release that he sent out.

22 I don't have any issue with Monday's changes.
23 I do agree that part and parcel to the Cox and IES
24 release would come, officers, agents, the typical
12:18:18 25 language that we all see in these releases. And that's

12:18:20 1 what we sent out.

2 So I really have nothing else to offer other
3 than to answer questions should the Court have them for
4 me or my clients.

12:18:29 5 THE COURT: Okay. I have no questions, sir,
6 at this point.

7 Okay. Mr. Sampson, have you had a chance to
8 see the revised proposed settlement agreement that's
9 been sent by Mr. Fink in this matter at approximately
12:18:43 10 9:30 this morning?

11 MR. SAMPSON: I didn't see a proposed
12 settlement agreement. I saw, like, a list of here's
13 some items. And the one that I take issue with is the
14 one that seeks to stop my client from being able to
12:18:56 15 proceed against Sesman and Duslak.

16 And yes, I do know and I understand if you
17 release a party, you typically would be releasing their
18 employees, and board of directors, and those types of
19 things unless you clearly indicate otherwise when you
12:19:10 20 put the settlement agreement together.

21 So when we put this on the record, that's why
22 I made it a point to say, none of this settlement
23 involves Sesman or Duslak at all in any of their
24 capacities. And if there was an idea of, well, hold
12:19:25 25 on, Sunrise wants all its employees, and there might be

12:19:29 1 a claim that they're employees, so that should have
2 been brought up when we put the terms on the record.
3 It shouldn't have been dropped on me just like they
4 couldn't come up later and say, we want it
12:19:39 5 confidential. Or, and there is language about
6 indemnification and what not, which we'll agree to even
7 though it wasn't specifically put on the record. But
8 if you wanted those -- when I say -- make it a point to
9 mention, and I'm sure had I said, for example, you
12:19:50 10 know, here's so and so, it's the CEO of Cox, we're not
11 releasing any claims against that person, I'm sure
12 Mr. Lemkul would have piped up and said, oh, no, hold
13 on. We don't agree to that. We were stippling on the
14 record putting the terms together.

12:20:05 15 So I think it's improper for Sunrise to stand
16 there while we're putting the settlement on the record,
17 and I say Sesman and Duslak are not released in any
18 way, shape, or form. They remain parties. We still
19 have all rights to proceed against them, and that's all
12:20:19 20 fine and dandy while we're on the record, and then to
21 come back later in the release and say, except they're
22 not. Because if they're employees they're out.

23 I don't think they're employees either as I
24 sit here right now. But I've not had a chance to find
12:20:32 25 any of that stuff out. I have not -- I have no

12:20:34 1 confirmation as to any of that. So but the bottom line
2 is, you know, what I proposed now is, again, the
3 settlement that says here's all the people. We agree
4 to release each other pursuant to the terms reached on
12:20:48 5 the record on those two days we were there. And then
6 we all sign it.

7 I don't see why anyone would have a problem
8 having that serve as the release given that it does
9 exactly what we agreed to do. The only thing I can
12:21:00 10 envision as to why that would be a problem for someone
11 is: One, they want to continue to delay things, which
12 is an inappropriate reason and shouldn't be permitted;
13 or two, they're looking to change the deal that was
14 reached on the record.

12:21:14 15 Because what I proposed says specifically
16 releasing each other as agreed on the record. No more,
17 no less. I don't think anybody should require that my
18 client do any more or any less for any of that.

19 So given, again, EDCR allows a settlement to
12:21:31 20 be enforceable if it's placed on the record, so we've
21 done that. Mr. Fink kept talking about we're looking
22 at getting people out. Well, they are out. Anybody
23 pursuant to the terms that were set forth on the
24 record, they're out. The agreement is enforceable on
12:21:49 25 the record. Beside the fact that the statute of

12:21:50 1 limitations ran over a year ago at this point.

2 So it's not a question about that. I don't
3 know what else is going on. And my clients should not
4 be -- my client should not be required to waive any
12:22:02 5 right at all that he -- that he specifically --
6 especially when he specifically preserved them on the
7 record when we -- when we resolved this thing and put
8 the settlement on the record.

9 So, again, I appreciate your Honor asking if
12:22:14 10 I've had a chance to review what they sent me. Again,
11 I didn't get an actual release. I just got an email
12 from Mr. Fink that had some terms. And the term that I
13 had an issue with is this idea that if they're
14 employees, then Sesman and Duslak are out. That was
12:22:27 15 not agreed to.

16 But I think what you should perhaps ask is, to
17 the defendants, you know, what about what Mr. Sampson
18 sent you guys Wednesday and Tuesday? Say, we hereby
19 release each other as agreed on the record, and it's
12:22:40 20 incorporated by this reference. And we're done. Why
21 wouldn't that work?

22 And if they're going to balk and somehow say
23 that won't work, then, clearly, they must be either
24 looking to just drag this thing out or trying to get
12:22:52 25 something in the release that wasn't on the record,

12:22:54 1 which I don't think the Court should permit.

2 THE COURT: Do we have a copy of that portion
3 of the record? Have we ordered one or no?

4 MR. SAMPSON: I've not ordered one. I mean,
12:23:06 5 again, that's another proposal is I will order a copy
6 of Wednesday and Friday's transcripts and just have
7 everyone just sign the transcripts so agreed, so
8 released.

9 THE COURT: All right. Anything else?

12:23:22 10 MR. SAMPSON: But whatever is on -- yeah.
11 Whatever is on the transcript from Wednesday and Friday
12 would be incorporated by reference with exactly what I
13 proposed. And it just says release each other as per
14 what was put on the record. And then we all sign off
12:23:36 15 and get my client his money. And then we're done.

16 THE COURT: Well, I don't know if it's -- I
17 wish it was just that simple.

18 The reason why I asked that question regarding
19 a copy of the transcript, I wish I could say with
12:23:51 20 computer-like recollection I can remember every
21 utterance in court regarding the general terms of the
22 settlement and the like, but I can't.

23 And so all I'm saying is this: As to whether
24 anyone is correct as to specifically what was placed on
12:24:06 25 the record, I'd need a copy of the transcript to make

12:24:08 1 that determination. That's what I'm saying.

2 MR. SAMPSON: I don't know that anyone is
3 disputing what I'm talking about. In fact, I think
4 Mr. Fink indicated that my discussion with what was
12:24:19 5 placed on the record was accurate.

6 I mean, my position is -- I'm telling you, we
7 put on the record -- we're not waiving, releasing, or
8 otherwise affecting anything against Sesman or Duslak.
9 I don't think anyone would dispute that.

12:24:34 10 And if they don't dispute it, I mean, we can
11 keep a transcript -- we can get a transcript if we need
12 to, but I don't think it's disputed what I'm telling
13 you as to what we agreed to.

14 THE COURT: Is it --

12:24:44 15 MR. SAMPSON: It was a pretty significant
16 point that day.

17 THE COURT: Is it disputed? Anyone?

18 MR. SAMPSON: Not -- I'm not disputing. I'm
19 not disputing my version of what happened. I tell you
12:24:58 20 that. This is Dave Sampson.

21 THE COURT: Okay. Mr. Fink, are we disputing
22 that?

23 MR. FINK: Well, first I did send this out at
24 9:35 this morning which included, like, I think, six
12:25:10 25 bullet points, five bullet points of things that were

12:25:13 1 kind of core to the agreement.

2 My best recollection is that when Mr. Sampson
3 said he was specifically retaining his rights to go
4 against Mr. Sesman and Mr. Duslak, we all agreed to
12:25:27 5 that. There was no specific discussion as to whether
6 or not they were independent contractors or employees.
7 So I didn't -- I didn't jump and say, well, to the
8 extent they're employees. This wouldn't cover them.
9 So that part is right.

12:25:41 10 But then I didn't know that I had to do that
11 because when you're releasing Sunrise, you're releasing
12 their employees, their board members, all of that. So
13 I don't know that I was thinking that that's something
14 I needed to specifically do.

12:25:53 15 I completely understood that to the extent
16 that Sesman and Duslak were his independent
17 contractors, which we all think they are, that the HOA
18 hired to do the lawn maintenance that it --
19 shouldn't -- it didn't and shouldn't affect
12:26:07 20 Mr. Sampson's rights to go after them. That was the
21 point.

22 But certainly not if it turns out that they
23 were my client's employees, which, again -- and I
24 appreciate Mr. Sampson recognizing that in most cases
12:26:20 25 that's what's included, but that's exactly what I was

12:26:22 1 thinking was excluded here. If they're employees,
2 they're covered.

3 THE COURT: So the impact of the -- what would
4 be considered the material terms of the settlement is
12:26:34 5 an issue.

6 MR. FINK: If -- if the -- I think the only
7 issue, if I'm not mistaken, is whether or not the
8 settlement covers those two gentlemen if it turns out
9 they're employees. That's it.

12:26:46 10 If they're not employees, there's no question
11 the settlement doesn't cover them. And allows
12 Mr. Sampson whatever avenue or avenues he needs to try
13 to recover money from them, including going after
14 Sunrise's insurance carrier if for some reason that
12:27:01 15 that carrier should have defended or indemnified those
16 two gentlemen as independent contractors. And that's
17 language that my carrier agreed to that's in that
18 agreement. Which is fine. And that absolutely was not
19 part of a negotiation to get them out.

12:27:16 20 But the issue really is, is whether or not if
21 it turns out that these two were employees and getting
22 W-2s, which there's been no evidence and no allegation
23 that there they were, that it's our belief that the
24 settlement covers them under that one circumstance.

12:27:34 25 THE COURT: Okay. Mr. Sampson.

12:27:35 1 MR. SAMPSON: Your Honor.

2 THE COURT: Go ahead.

3 MR. SAMPSON: Sure. All I would ask, again,
4 is the Court to consider, well, you know, that should
12:27:42 5 have been brought up on the record. Because I made
6 clear -- and there is no dispute it sounds like. I
7 made it clear we want to preserve all rights against
8 Sesman and Duslak. They've been defaulted. We want to
9 move forward against them. And this release and this
12:27:56 10 money doesn't go to affecting any of my client's rights
11 against them, period.

12 And the response while we were on the record
13 from Mr. Fink and everybody else was that is correct.
14 And we are in agreement.

12:28:08 15 And if they were going to raise some kind of,
16 well, hold on. Is this, then okay. But if not, then
17 that was the time to do it, and they did not do it.
18 And they did it -- they had a chance on Wednesday and
19 again on Friday. So we can't even blame it on, like,
12:28:23 20 spur of the moment. I didn't have time to consider it.
21 It just got tossed out there. It was brought up
22 specifically, and they agreed. And they can't now turn
23 around and unagree, or try to undo it when we said --
24 again, all I want to do is enforce the terms that were
12:28:39 25 placed on the record. And I don't think my client

12:28:41 1 should be forced to agree to terms that weren't placed
2 on the record, which Mr. Fink is now asking to do. I
3 think -- I hope Mr. Fink is correct when he says
4 they're not employees.

12:28:51 5 I'm a little concerned if he is so convinced
6 they're not employees why this is a sticking point.
7 Because it shouldn't be. If he's convinced they're not
8 employees, I don't know how it would turn out, as he
9 used the phrase, if they somehow would magically become
12:29:06 10 employees other than perhaps if the carrier goes to
11 Sunrise, and says, you know, I don't know. Something
12 goes on and all of a sudden that all -- that they come
13 up W-2s that were not provided before and Mr. Fink's
14 not aware of, and then we've somehow been mislead.

12:29:20 15 But the terms of the agreement were reached on
16 the record, and we're just asking no more, no less than
17 what was placed on the record be enforced. And since
18 it's been three weeks now and they can't seem to come
19 up with an agreement, that Sunrise would be on board
12:29:37 20 with that comports with what was on the record, then I
21 think the Court either just find that that's waived at
22 this point, or that they sign what I proposed. Which
23 is we just release each other pursuant to what was
24 placed on the record.

12:29:51 25 THE COURT: Anything else? There is no way

12:29:52 1 this can be worked out.

2 MR. FINK: Never say no way. But your Honor,
3 again --

4 THE COURT: And the reason why I do that, I
12:30:01 5 think everybody understands this, it's always easier.

6 MR. FINK: Right. I mean, it's -- it's
7 problematic. I mean, look, there's nothing in the
8 complaint. So when Mr. Sampson says, Well, then we
9 should have said something. The problem here is that
12:30:12 10 if we are looking at the record, we're looking at the
11 entire record.

12 And the entire record is the amended complaint
13 which makes no allegation, even an allegation, that
14 either one of those two gentlemen were employees of
12:30:23 15 Sunrise, or were working within the course and scope of
16 being employees of Sunrise.

17 So if that's what he has alleged, then that's
18 why I have no problem releasing them as to how he's
19 alleged it. Had he alleged in his amended complaint
12:30:36 20 that they were employees of Sunrise, that would have
21 been a different discussion on the record.

22 Should that have been made more clear from
23 both sides? Probably, which we wouldn't be here. But
24 the fact is it's -- again, it's in the operative
12:30:51 25 complaint. There is no allegations that they are

12:30:53 1 employees, which is why I didn't feel the need that I
2 had to clarify that.

3 And again, nothing in any 16.1 disclosure, up
4 until and including trial, that alleged that either one
12:31:02 5 of them were employees. And I also think and I didn't
6 check this before the hearing, but even when we did the
7 motion for summary judgment, and even the renewed
8 motion for summary judgment -- or I think it was a
9 motion for reconsideration, I don't believe, and I'll
12:31:15 10 apologize if I'm wrong here, I don't believe that even
11 then Mr. Sampson -- Mr. Sampson said they were
12 employees.

13 And then there was a motion in limine related
14 to keeping the gardener's statements out of evidence.
12:31:29 15 And, again, he didn't say they were employees. He said
16 that we argued about whether or not agent in principal
17 whether or not that would --

18 So there has never been an allegation by
19 Mr. Sampson in this case that they're employees. And I
12:31:39 20 think that's true which is what I said all along. I
21 don't think they were. I thought they were independent
22 contractors, two guys on a mower.

23 However, I'm sure the Court can appreciate
24 that even though I'm really, really comfortable with
12:31:53 25 that, I'm also not that comfortable with just leaving

12:31:57 1 it to wind.

2 So, I mean, maybe the best thing to do is to
3 get a copy of the transcripts from those two hearings
4 and try to hash it out. I mean, the good thing is we
12:32:06 5 do have the money, so we're not waiting on that. So if
6 there is no delay here, no one is trying to delay
7 anything. We're just trying to get it right and trying
8 to save our own --

9 THE COURT: Well, here's the issue. I mean,
12:32:18 10 I've been listening patiently. And it appears to be no
11 dispute that hypothetically they're independent
12 contractors and potentially additional insureds under
13 the insurance policy, there would be coverage.

14 MR. FINK: Well, well, no, no. Not a coverage
12:32:33 15 issue, but would allow them to go after my insurance
16 carrier.

17 THE COURT: Right.

18 MR. FINK: Absolutely.

19 THE COURT: I understand. It's not a
12:32:38 20 stipulation.

21 MR. FINK: Right.

22 THE COURT: It's not a stipulation of
23 coverage.

24 MR. FINK: Right.

12:32:41 25 THE COURT: But there's not a -- I get the

12:32:43 1 significance.

2 MR. FINK: Right.

3 MR. MELORO: And your Honor.

4 THE COURT: Yes.

12:32:48 5 MR. MELORO: Joseph Meloro on behalf of
6 Mr. Bushbaker.

7 Mr. Fink did send an email earlier today. And
8 there were some bullet points. One of the bullet
9 points that I want to make clear was that Mr. Bushbaker
12:32:59 10 is not waiving any claims against any insurance
11 carriers.

12 Also I'd like the record to reflect that
13 Mr. Sampson in his motion did state that Mr. Bushbaker
14 is not doing anything to delay this settlement and that
12:33:14 15 we've been cooperative.

16 And so I just want to make that clear that
17 we're not doing anything. This is a dispute. I think
18 it's pretty narrow on whether these are independent
19 contractors or employees. Doesn't really regard my
12:33:29 20 client. But we're trying to help facilitate a
21 settlement here.

22 MR. FINK: We'd like nothing more than to give
23 Mr. Sampson the money.

24 MR. SAMPSON: Your Honor.

12:33:38 25 THE COURT: Yes. Yes, Mr. Sampson.

12:33:39 1 MR. SAMPSON: Well, so given that's the case,
2 I think then why don't we do this. Why doesn't the
3 Court order the money be paid to Dr. Russo, you know,
4 forthwith, or however you want to do it. Within, I
12:33:51 5 don't know, by middle of the next week or something.
6 If it's here in town, it could even be by the end of
7 this week. But order that the funds be paid. And that
8 we set maybe a status check or something. Or where we
9 can look at --

12:34:03 10 I don't know what Mr. Fink -- I've never known
11 him to say something that's not accurate, but I don't
12 know that my complaint doesn't make those allegations.
13 I know I typically have a paragraph in every complaint
14 I've done that involves respondeat superior potentially
12:34:18 15 that says the parties -- that the defendants were all
16 agents, principals, employees, employers, managers and
17 service with one another. Perhaps it's not in there.
18 I don't know. I don't know what was said. Sounds like
19 neither does Mr. Fink with much surety about what was
12:34:33 20 said in relation to motions that were filed.

21 But I think you say, Look, the Court is going
22 to enforce the terms that were reached on the record.
23 So go ahead and pay the money. We'll figure out a way
24 to draft it and get it written up. But we're going to
12:34:45 25 enforce it pursuant to what was placed on the record.

12:34:47 1 And the other issue I've got is if, you know,
2 Mr. Fink is saying, Well, we never had any allegation
3 that he thought they were employees. We never -- it
4 was never anything that would have ever even entered my
12:34:57 5 mind, well then why now? Because I didn't bring it up.

6 Why now when all of a sudden it's the sticking
7 point. Something has gone on, and it sure -- I mean,
8 again, I only see two reasons why we would do anything
9 other than sign something that says the terms reached
12:35:12 10 on the record are incorporated herein and we agree to
11 them. Unless they're trying to delay things or put
12 something in there that wasn't reached on the record.

13 And the Court shouldn't permit either one of
14 those to take place. So, you know, I haven't heard any
12:35:24 15 objection to what I proposed a day or two ago saying
16 let's just sign something saying that we agree to the
17 terms as proposed on the record, or as placed on the
18 record and incorporated by this reference and then pay
19 the money, then we're done.

12:35:38 20 So, again, I would just ask we either do that
21 or the Courts say, look, as Mr. Fink said and I'm sure
22 Mr. Lemkul probably agrees, they'd love nothing more
23 than to give Dr. Russo his money. So go ahead and give
24 it to him. And then we can sit down at some point if
12:35:52 25 we need to have an evidentiary hearing or some other

12:35:54 1 kind of status check where we go over complaints or the
2 transcript from when we put it on the record. Because
3 at some point we'll have a release in place that
4 Dr. Russo will sign that comports to what was placed on
12:36:05 5 the record. No more, no, less.

6 THE COURT: I don't think I can do that, as
7 far as ordering payments of monies without an execution
8 of some sort of closing documents, or release, or
9 something like that.

12:36:22 10 MR. SAMPSON: So then what about the one I
11 proposed that now no one has as of this point had an
12 objection to?

13 THE COURT: Well, here's --

14 MR. SAMPSON: That I've heard.

12:36:31 15 THE COURT: This is the -- I think it's always
16 better for parties to come to some sort of resolution.
17 Because I can anticipate -- and I don't mind saying
18 this, and then I want to go to lunch. I think we all
19 do. But and I don't know this, but I can anticipate
12:36:57 20 potentially without having it all tied up, there could
21 be litigation as to the impact of the release under one
22 remote scenario. Right?

23 And that's the concern I have. And, I mean,
24 it doesn't matter, I mean, from a personal level. But
12:37:16 25 from a judicial perspective, that's why I always want

12:37:20 1 you to try to come to some sort of accord before I make
2 decisions because realistically it could be litigation.
3 I mean, the chances are remote. I get that.

4 Because when you look at it from this
12:37:36 5 perspective if there was truly evidence -- I mean, this
6 makes perfect sense. If there was evidence that they
7 were employees, there would not have been a default
8 judgment entered against them. There would have been
9 motions to set aside, answers, and the like. And
12:37:50 10 that's pretty much the status of the case because I
11 can't -- I can't foresee either Mr. Lemkul or Mr. Fink
12 permitting an employee to be defaulted; right?

13 MR. SAMPSON: Could we perhaps enter a
14 stipulation on the record here and now that for
12:38:06 15 purposes of this litigation they're not employees?

16 THE COURT: Well, I think -- here's the thing,
17 and I don't -- I mean, as far as -- and, I mean, you
18 know, when you look at it, this is so layered. I'd
19 hate to go down this rabbit hole. But there could be
12:38:22 20 arguments made based upon the law of the case; or facts
21 of the case; or how the case has developed; as it has
22 an impact, what does the release cover? And so those
23 are issues. I think -- I don't mind saying this. I
24 think it's almost -- it rises to a level of a
12:38:47 25 significant presumption they're not employees because

12:38:50 1 there would have been an answer filed, you know. But I
2 just want everyone to come to some sort of accord on
3 this.

4 MR. SAMPSON: Well, the problem is it's been
12:38:59 5 three weeks, and we haven't. And I've spent two weeks,
6 Monday the 21st until the following week before I heard
7 anything and Thursday until yesterday where I go with
8 no communication from the -- from Sunrise. Or -- and
9 one of those weeks was including Cox, and then three
12:39:19 10 weeks with Scarcelli. I'm glad to hear he's on board.
11 But I don't want any further -- I mean, I don't want to
12 tell my client, well you don't get your money and you
13 don't get your verdict either. So...

14 THE COURT: I understand.

12:39:30 15 MR. SAMPSON: I mean, I need at this point for
16 the Court to please take action to tell these
17 defendants, do what -- enter into a release that
18 comports no more no less than what was placed on the
19 record and give the doctor his money.

12:39:44 20 MR. MELORO: Your Honor, I take exception to
21 being grouped as defendants by Mr. Sampson. There are
22 separate entities here. I communicated with
23 Mr. Sampson and the other parties in this action, not
24 only that first week after we made this agreement but
12:40:01 25 the following week I did a follow up saying have we

12:40:05 1 come to any agreements. So I just want it clear when
2 Mr. Sampson says "defendants", which defendants he's
3 speaking of, please. Thank you.

4 MR. FINK: Your Honor --

12:40:15 5 MR. SAMPSON: And I thought -- I don't know
6 what comes through on the phone, but I thought I said
7 some of the defendants, specifically Sunrise. I
8 went -- I got the release either Sunday night, Monday
9 morning. Didn't hear anything for a week. And then we
12:40:29 10 talked from Monday to Thursday. I didn't hear anything
11 for another week until yesterday. Cox I didn't hear
12 for the first week, but we did deal with them the
13 following week. We got it all worked out.

14 Scarcelli I hadn't heard from hardly at all,
10:27:58 15 but it sounds today like they're on board.

16 (Reporter clarification)

17 So that's where we are at. And again, I
18 just -- I don't want -- please don't make me go back
19 and tell Dr. Russo you don't get your money; you don't
12:40:49 20 get your trial either. There is some kind of limbo.

21 I'd like to think there is some way the Court
22 can take action under the settlement to say here's what
23 you need to do, and it includes -- and it should
24 include signing the release that comports and provides
12:41:05 25 no more no less than what was placed on the record, and

12:41:08 1 tender the funds pretty quickly. We've already been
2 three weeks into this.

3 THE COURT: Mr. Fink.

4 MR. FINK: Good, your Honor. Mr. Sampson made
12:41:16 5 an interesting suggestion that I'd like to think about
6 and that may work. That if we say for the purposes of
7 this litigation they weren't employees. That may take
8 care of all of this. I would just need to run that by
9 my people. But that may take care of all of our
12:41:31 10 concerns at that point, and then we can -- we can be
11 done.

12 THE COURT: How's that, Mr. Sampson?

13 MR. SAMPSON: It was my suggestion, so I still
14 totally agree with it.

12:41:40 15 THE COURT: Well, you know what --

16 MR. SAMPSON: I would ask -- I would ask
17 just -- Mr. Fink has made a couple of comments today,
18 and I think the Court also echoed them, along the lines
19 of Sesman and Duslak, all rights against them, anybody
12:41:53 20 who insures them, you know, all of those are preserved.
21 They're not affected. I would like to make sure that
22 is crystal clear in whatever iteration we end up with.
23 I put some language in there that Mr. Fink has asked to
24 modify. And I think he and I hopefully can work that
12:42:08 25 out, and say, you know, that sentiment that, I believe,

12:42:11 1 was expressed much more clearly today than in the
2 agreement be set out very, very clearly.

3 THE COURT: And I think he has no problem with
4 that because that was his idea, you know, so regarding
12:42:24 5 the fact that if they're independent contractors,
6 there's no waiver of the right to seek coverage for
7 this case. I mean, I get that based upon the insurance
8 policy. And no big deal there.

9 But, okay. How about this? Because I know
12:42:41 10 your client wants their money. And I've been in that
11 situation before.

12 How long do you think it would take you,
13 Mr. Fink, to run that passed your clients?

14 MR. FINK: Well, I can try to do that now.
12:42:55 15 They're on the east coast, Philly. So I can try to do
16 that now. But I would say for sure -- and they're,
17 obviously, they're hot on this issue. I would say if I
18 can't get that by them today for whatever reason,
19 tomorrow morning. You know, I get up early. I'm
12:43:09 20 usually up east coast time anyway. So I think I can
21 get an answer from them, again, either this afternoon
22 or before everybody generally wakes up in the morning.
23 But I think it's -- I think it's a workable solution
24 from where I'm sitting.

12:43:25 25 And yeah, Mr. Sampson and I, other than this

12:43:28 1 one thing, we're in complete agreement. I don't think
2 we have any issues on that.

3 THE COURT: So how about this then.

4 (Off-the-record scheduling discussion
01:24:06 5 between the court clerk and the Court.)

6 THE COURT: How about a status check,
7 telephonic status check at 9:30?

8 MR. FINK: That would be fine for Sunrise,
9 Judge.

12:43:52 10 THE COURT: Is that fine, Mr. Sampson?

11 MR. SAMPSON: That's fine.

12 THE COURT: Okay.

13 MR. SAMPSON: In the meantime, Mr. Fink can
14 just re-forward to me whatever the final version is
12:44:04 15 he's claiming. Or perhaps what we're talking the
16 stipulation he'd be okay with, the last one I provided.
17 And then I get a chance to look that over, and we can
18 talk it out tomorrow and find out where we're at, but
19 what if anything else we would do from there.

12:44:16 20 THE COURT: Well, I think this -- I think it's
21 actually much simpler than that in this regard.

22 Hypothetically, Mr. Fink hears back from the
23 east coast sometime today. He gives you a phone call
24 or email, says, Look, my client has no problems with
12:44:32 25 the stipulation. You guys move from -- with that, with

12:44:36 1 the stipulation and whatever release language you feel
2 would be appropriate. And everything is covered. I
3 make my phone call tomorrow at 9:30. Say, Look, Judge,
4 we've resolved this issue.

12:44:50 5 MR. SAMPSON: That would be nice too.

6 THE COURT: I mean, I can foresee that
7 happening. And the reason -- and what that does is
8 this, and remember this is important too, that gives
9 finality.

12:45:02 10 MR. SAMPSON: Yeah.

11 THE COURT: That's a big -- and I'm -- and,
12 Mr. Sampson, I understand your plight, and I respect
13 it. And I'm not just kicking the can down the road.
14 I'd rather give you finality now than maybe appeals,
12:45:17 15 those types of things. And we don't need that. We
16 need to just put this case to bed. Because 24 hours
17 could save you a year and a half, right?

18 MR. FINK: Mr. Sampson, did you get a copy of
19 the email I just sent over to you?

12:45:31 20 MR. SAMPSON: I don't know.

21 MR. FINK: Okay.

22 MR. SAMPSON: I'm not in a position to check
23 my emails right now.

24 MR. FINK: All right. Let me know if you
12:45:37 25 didn't get it. I just sent it over again, so I can

12:45:40 1 do --

2 MR. SAMPSON: All right. I'll take a look.

3 THE COURT: So what we'll do, we'll set a

4 9:00 o'clock conference call, and we'll use Court Call.

12:45:46 5 9:30, I'm sorry.

6 MR. FINK: 9:30.

7 THE COURT: 9:30. We'll use Court Call. And

8 we'll -- how do we do that?

9 THE COURT CLERK: Do you all have

12:45:56 10 instructions?

11 MR. LEMKUL: No.

12 MR. FINK: I'm sure my office does somewhere.

13 THE COURT CLERK: No worries.

14 MR. FINK: Those are all beyond my

12:46:03 15 capabilities.

16 THE COURT: And it's just a continuation of

17 today's hearing, Mr. Sampson and Mr. Lemkul. That's

18 all it is.

19 MR. LEMKUL: Sounds good, your Honor.

12:46:14 20 MR. SAMPSON: Sounds good.

21 THE COURT: All right. Everyone enjoy your

22 day.

23 MR. FINK: Thank you.

24 THE COURT: All right.

12:46:16 25 MR. SAMPSON: All right.

12:46:21 1

MR. MELORO: Have a good lunch, your Honor.

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(Proceedings were concluded.)

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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

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Pursuant to NRS 239.053, illegal to copy without payment.

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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 NRCP 26(e) and 16.1. In addition, because some of these responses may have been ascertained by its attorneys and investigators, SUNRISE VILLAS may not have personal knowledge of the information from which these responses are derived.

///

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

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

RESPONSE TO REQUEST NO. 1:

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

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

SUPPLEMENTAL RESPONSES TO REQUEST NO. 1:

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

SECOND SUPPLEMENTAL RESPONSES TO REQUEST NO. 1

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

REQUEST NO. 2:

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

RESPONSE TO REQUEST NO. 2:

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

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

SUPPLEMENTAL RESPONSES TO REQUEST NO. 2:

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

SECOND SUPPLEMENTAL RESPONSE TO REQUEST NO. 2:

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

REQUEST NO. 4:

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

RESPONSE TO REQUEST NO. 4:

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

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

SUPPLEMENTAL RESPONSES TO REQUEST NO. 4:

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

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

SECOND SUPPLEMENTAL RESPONSES TO REQUEST NO. 4:

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

REQUEST NO. 6:

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

RESPONSE TO REQUEST NO. 6:

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

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

SUPPLEMENTAL RESPONSES TO REQUEST NO. 6:

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

SECOND SUPPLEMENTAL RESPONSE TO REQUEST NO. 6:

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

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

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

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

7 **SUPPLEMENTAL RESPONSES TO REQUEST NO. 11:**

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

11 **SECOND SUPPLEMENTAL RESPONSES TO REQUEST NO. 12:**

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

19
20 DATED this 2nd day of March, 2018.

21
22 SPRINGEL & FINK LLP

23 By: /s/ Jonathan C. Pattillo
24 LEONARD T. FINK, ESQ.
25 Nevada Bar No. 6296
26 JONATHAN C. PATTILLO, ESQ.
27 Nevada Bar No. 13929
28 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.

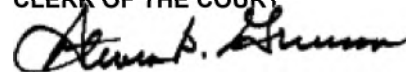
 X VIA ELECTRONIC SERVICE: by submitting the foregoing to the Court's E-filing System for Electronic Service upon the Court's Service List pursuant to EDCR 8. The copy of the document electronically served bears a notation of the date and time of service. The original document will be maintained with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

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Steven D. Grierson
CLERK OF THE COURT


ERR

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Attorneys for Defendant,

SUNRISE HOA 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 HOA 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

**ERRATA TO 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 AS TO
EXHIBITS COVER SHEETS ONLY**

ORAL ARGUMENT REQUESTED

Defendant, SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION (“SUNRISE”), by and through its counsel of record, the law firm of Springel & Fink LLP and the law firm of Lincoln Gustafson and Cercos, files this errata to correct the exhibits only attached hereto as exhibits “11,” “12” and “13” with cover sheets to reflect each exhibit.

DATED this 4th day of February, 2021.

SPRINGEL & FINK LLP

/s/ Leonard T. Fink, Esq.

By:

LEONARD T. FINK, ESQ.
Nevada Bar No. 6296
RAVEN M. YIM, ESQ.
Nevada Bar No. 14972
9075 W. Diablo Drive, Suite 302
Las Vegas, NV 89148
Attorneys for Defendant,
*SUNRISE HOA 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 **February 4, 2019**, I served the document described as **ERRATA TO 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 AS TO EXHIBITS COVERS ONLY** 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.

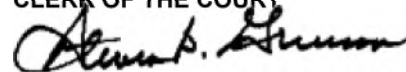
I declare under penalty of perjury that the foregoing is true and correct.

/s/ Alma Duarte

 An employee of Springel & Fink LLP

EXHIBIT 11

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CLERK OF THE COURT



MSAD
LEONARD T. FINK
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Attorneys for Defendant
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

DISTRICT COURT
CLARK COUNTY, NEVADA

SIMONE RUSSO,	)	Case No.: A753606
	)	Dept: XVI
Plaintiff,)	
	)	MOTION TO SET ASIDE AND/OR
vs.	)	AMEND JUDGMENT
)	
COX COMMUNICATIONS LAS VEGAS,	)	ORAL ARGUMENT REQUESTED
INC. D/B/A COX COMMUNICATIONS; IES	)	HEARING REQUESTED
RESIDENTIAL, INC.; SUNRISE VILLAS IX)	
HOMEOWNERS ASSOCIATION; J&G)	
LAWN MAINTENANCE; KEVIN)	
BUSHBAKER; PW JAMES)	
MANAGEMENT & CONSULTING, LLC;)	
AND DOES I-V, AND ROE)	
CORPORATIONS I-V, inclusive,)	
)	
Defendants.)	

NOTICE

Defendant Sunrise Villas IX Homeowners Association ("Sunrise HOA") hereby moves this Court for an order either setting aside the default judgment entered in this matter on December 17, 2019 against Richard Duslak ("Duslak") and Justin Sesman ("Sesman") or, in the alternative, amending the judgment to explicitly reflect that liability as to each is based solely on their conduct as independent contractors.

The motion, made pursuant to NRCP 60, is based on the fact that Plaintiff agreed to release Duslak and Sesman from any and all liability arising from their conduct as HOA employees.¹ See

¹ Notwithstanding the fact that neither Duslak nor Sesman were alleged to be HOA employees, the HOA obtained a release of each out of an abundance of caution.

QBE's Motion to Intervene to Enforce previously filed.² As reflected in Plaintiff's Opposition to the Motion to Enforce, Plaintiff is now attempting to disavow himself from the release in contending that he never released his claims against Duslak and Sesman as alleged HOA employees. Meanwhile, Duslak and Sesman themselves have now sued the HOA claiming that the HOA is liable and responsible for the judgment based on the contention that each were HOA employees. See Exhibit 10 attached hereto.

Based on these developments, the judgment should be either set aside in its entirety as void by virtue of the release or, in the alternative, amended to reflect that the liability of Duslak and Sesman is limited and based solely to conduct as independent contractors (to the extent a *prima facie* showing of such can be made).

The motion is made based on this Notice, the points and authorities incorporated herein, the Court's file (including the Motion To Intervene to Enforce Settlement), any other matter this Court deems appropriate and any allowed oral argument.

DATED this 21st day of January, 2020.

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, Nevada 89148
Attorneys for Defendants
*SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION*

MOTION

I. INTRODUCTION

This matter arises from an alleged August 2016 slip and fall involving a coaxial cable wire

² Request is made that this Court take judicial notice of the Motion to Enforce as well as its entire file for this matter. Note that a hearing date for the Motion to Enforce has been set for February 11, 2021.

installed at a residence that Plaintiff contends caused him to trip so as to sustain bodily injuries. In this suit, Plaintiff alleged that Defendant, Sunrise HOA, was liable and responsible for his injuries based on alleged maintenance obligations the HOA ostensibly owed in connection with the area adjacent to the wire.

While Plaintiff did not initially name Duslak and Sesman as defendants in the case when he filed suit in 2017, he added each as defendants by way of an amended Complaint filed in 2018. Based on the conclusion that each were independent contractors, coupled with the absence of any allegations made by Plaintiff to the contrary, the HOA did not appear for either individual such that defaults were entered as to each.³

A settlement was reached in October 2019 which contemplated the carve out of Duslak and Sesman. In connection with documenting the settlement, the parties encountered difficulties regarding the scope and extent of the carve out of Duslak and Sesman, leading to a November 7, 2019 hearing before this Court in connection with a motion to enforce Plaintiff filed. See Exhibits 3, 4.

At the November 7, 2019 hearing, counsel for Plaintiff agreed to stipulate that Plaintiff would release any claims against Duslak and Sesman based on their conduct as employees. By virtue of this stipulation, counsel agreed to narrow Plaintiff's claims against Duslak and Sesman to their conduct (if any) as independent contractors. Of significance, the stipulation was made in open court before subsequently being reduced to writing. See Exhibits 4-7.

In reliance on the release, the HOA did not oppose the entering of a default judgment against Duslak and Sesman on December 17, 2019, a copy of which is attached hereto as Exhibit 8. The default judgment, however, itself includes no limiting provision reflecting that liability is based solely on their conduct as independent contractors. See Exhibit 8.⁴

In the absence of any limiting verbiage, Duslak and Sesman have now sued the HOA contending that each were HOA employees such that the HOA is liable and responsible for the

³ The Amended Complaint omits any allegations that Duslak and Sesman were HOA employees.

⁴ Compounding matters, the docket includes no record of the evidence submitted to substantiate the judgment while the hearing was not transcribed. See Exhibit 9. Given this, the HOA cannot determine the basis for the judgment entered against Duslak and Sesman.

judgment. See Exhibit 10. Meanwhile, counsel for Plaintiff, in connection with a separately filed Motion to Intervene to Enforce Settlement, has now attempted to disavow the stipulation he agreed to by contending that Plaintiff did not release his claims against Duslak and Sesman in their capacities as HOA employees. See Opposition to Motion to Enforce.

Based on these circumstances, it is respectfully submitted that the judgment entered by this Court violates the terms of the settlement agreement such that it is void. Alternatively, to the extent that Duslak and Sesman face liability arising from their conduct solely as independent contractors, the judgment should be amended and modified to reflect this limitation. Accordingly, for the reasons set forth herein, it is respectfully requested that the motion be granted.

II. BACKGROUND FACTS

Per above, this matter arises from an alleged 2016 slip and fall in which Plaintiff alleges the HOA was liable.

In October 2019, a settlement was reached in this case. See Transcripts dated October 16, 2019 and October 18, 2019, copies of which are attached hereto as Exhibits 1 and 2. Issues arose, however, in documenting the settlement, leading Plaintiff to file a Motion To Compel Settlement on November 1, 2019, a copy of which is attached hereto as Exhibit 3.

Plaintiff's Motion led to the scheduling of two separate hearings that were ultimately held on November 7, 2019 and November 8, 2019 during which the claims against Duslak and Sesman were extensively vetted and discussed. See Exhibits 4 and 6. Of significance, the November 7, 2019 transcript includes an extensive discussion between counsel and this Court regarding the fact that Duslak and Sesman were not part of the settlement. In framing the dispute, counsel for HOA advised the Court as follows:

The hold up, and Mr. Sampson I think said it but I'll say it again, I think the real hold up right now is whether or not the release that we negotiated was intended to cover Mr. Sesman and Duslak, D-U-S-L-A-K, I think. Actually, I've got it in front of me. Okay. Duslak, D-U-S-L-A-K, and Sesman, S-E-S-M-A-N, if they were considered employees of Sunrise.

There's never been one bit of evidence in this case that they were employees. It was always that they were independent contractors. But as I'm sure the Court has dealt with thousands of settlements, when you settle with an entity, you are settling with the employees too.

There's nothing in Mr. Sampson's amended complaint that even suggests or asserts that either one of these gentlemen is an employee. There is nothing in any one of his disclosures that asserts they're employees.

So the idea here is that not only is Sunrise getting itself out of the case, but it's also getting out its employees, which also includes board

members. Although, we didn't specifically say that on the record either, but also Cox, IES, they're also getting their employees out.

Exhibit 4, 16:12-17:25

Counsel for the HOA further stated as follows:

So I think that the only hang up is whether or not this settlement includes Mr. Duslak and Mr. Sesman if they are found to be employees of Sunrise. And I think that's it.

If they're not and they're independent contractors, then the settlement agreement absolutely does not cover them. Would allow Mr. Sampson to do what he needs to do. And even try to go after my client's insurance carriers to see if there is coverage for them as independent contractors. We all agree that -- that was one of the things that was important to him. We aren't seeking to release that.

But to the extent they're employees, this should cover it. And I think, I think that's really where we are, Judge.

Exhibit 4, 18:6-23, see also 27:6-24.

Counsel for Plaintiff initially responded that while he had no evidence existed that Duslak and Sesman were HOA employees, it was his view that the settlement did not necessarily contemplate the release of them in any capacity. See Exhibit 4, 20:16-24:8. In response to this comment, this Court stated as follows:

Because when you look at it from this perspective if there was truly evidence -- I mean, this makes perfect sense. If there was evidence that they were employees, there would not have been a default judgment entered against them. There would have been motions to set aside, answers, and the like. And that's pretty much the status of the case because I can't -- I can't foresee either Mr. Lemkul or Mr. Fink permitting an employee to be defaulted; right?

Exhibit 4, 37:4-12.

In addressing this Court's concerns, counsel for Plaintiff made the following proposal:

Could we perhaps enter a stipulation on the record here and now that for purposes of this litigation they're not employees?

Exhibit 4, 37:13-15.

The proposal led to the following exchange:

MR. FINK: Good, your Honor. Mr. Sampson made an interesting suggestion that I'd like to think about and that may work. That if we say for the purposes of this litigation they weren't employees. That may take care of all of this. I would just need to run that by my people. But that may take care of all of our concerns at that point, and then we can -- we can be done.

THE COURT: How's that, Mr. Sampson?

MR. SAMPSON: It was my suggestion, so I still totally agree with it.

Exhibit 4, 40:4-14.

In confirming that the proposal contemplated that Plaintiff would retain the right to proceed against Duslak and Sesman solely in their capacity as independent contractors, the Court made the following statement:

THE COURT: And I think he has no problem with that because that was his idea, you know, so regarding the fact that if they're independent contractors, there's no waiver of the right to seek coverage for this case. I mean, I get that based upon the insurance policy. And no big deal there.

Exhibit 4, 41:3-8.

The hearing concluded with the Court setting a status check for the following day (November 8, 2019) at 9:30 a.m. in order to afford the parties with time to document the stipulation. See Exhibit 4, 42:6-12.

On November 8, 2019 at 8:26 a.m. (before the Status Check), counsel for Plaintiff sent an email (a copy of which is attached hereto as Exhibit 5) advising that he had made a few minor changes to the release in light of the agreement reached between the parties. The email counsel for Plaintiff sent enclosed copy of a draft Stipulation he was agreeable to that provided as follows:

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 WITH WAGES, AND WHOM SUNRISE VILLAS IX HOMEOWNERS

ASSOCIATION HAD THE RIGHT TO DIRECT AND CONTROL
WHILE DUSLAK AND SESMAN PERFORMED SERVICES FOR
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION.. . .

Exhibit 5, p 4.

The parties subsequently appeared at the Status Check later that morning. Exhibit 6. At the hearing, counsel for Plaintiff made the following representation to the Court regarding recent developments:

So perhaps the Court could say, you know, if Mr. Fink and his client agree to what Mr. Sampson proposed this morning, and no one else has any objection on this Sunrise employee Duslak Sesman thing then we'll go ahead and sign what Mr. Sampson proposed this morning. And that's going to be done.

And if for some reason Mr. Fink's client doesn't agree, then we'll do the other proposal Mr. Sampson set up which is we all just all release each other pursuant to the terms that were placed on the record on the 16th, and 18th which are incorporated by this reference, and we'll just do it that way.

Exhibit 6, 5:22-6:8

In response, the Court made the following comment:

There appears to be a significant probability that based upon the action of the parties, and more specifically Mr. Fink, that we have an agreement in principle as to the language that will be in the agreement. Because whatever changes were made as it related to the two putative/independent contractor, whatever status they have, apparently there is some sort of agreement as the type of language that would be appropriate. And so all we have to do at this point is this: Either it's approved or it's not approved.

If it's approved, then we're done. There's no need for law and motion. There's no need for any decisions from me. I would anticipate the checks would be exchanged shortly.

Exhibit 6, 8:3-17.

The HOA and its insurer ultimately agreed to the revisions, leading to the full execution of the release agreement (including the stipulation) and the disbursement of the proceeds. See Motion, Ex. 7. Based on these circumstances, it is patent and clear that Plaintiff agreed to release Duslak and Sesman for any liability arising from their conduct as HOA employees such that the claims against each were limited to their conduct (if any) as independent contractors.

Plaintiff proceeded to obtain a default judgment against Duslak and Sesman on December 17,

2019. See Exhibit 8. While the judgment itself includes no limiting verbiage, it is now evident that the judgment is based on contentions that each were HOA employees as evidenced by the following:

- Plaintiff filed a counterclaim in connection with a coverage action the insurer for the HOA filed in which Plaintiff asserted that the insurer was liable and responsible for the judgment. See QBE's Motion To Enforce, Exhibits B and C.
- Duslak and Sesman have filed counterclaims in the coverage action in which each allege that they face exposure as former HOA employees. See Exhibit 10.
- Plaintiff has opposed QBE's Motion To Enforce (in which the HOA joined) on the basis that he did not release Duslak and Sesman in their capacity as HOA employees.

III. DISCUSSION

NRCP 60 provides as follows:

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief From a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than 6

months after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) upon motion filed within 6 months after written notice of entry of a default judgment is served, set aside the default judgment against a defendant who was not personally served with a summons and complaint and who has not appeared in the action, admitted service, signed a waiver of service, or otherwise waived service; or

(3) set aside a judgment for fraud upon the court.

A judgment is void if there is a defect in the court's authority to enter judgment. *Gossett v. Snappy Car Rental*, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995). A motion brought on the basis that a judgment is void need only be brought within a reasonable time. *In re Harrison Living Trust*, 121 Nev. 217, 220, 112 P.3d 1058, 1060 (2005).

Meanwhile, a trial court retains the inherent power to correct mistakes. *Masi v. Jessop*, 129 Nev. 1136 (2013). The power to correct a judgment extends to instances of fraud. See *Murphy v. Murphy*, 65 Nev. 264 (1948)

In this case, the judgment is void as it violates the agreed-upon terms of the settlement reached in this case. Plaintiff released his claims against Duslak and Sesman based on their conduct as HOA employees. As Plaintiff erroneously contends he is not bound by the release, the judgment should be set aside as void pursuant to both NRCP 60(b)(4) and (d)(3).

Alternatively, to the extent that Plaintiff possesses meritorious claims against Duslak and Sesman as independent contractors (for which no record exists), the judgment should, at a minimum, be modified per NRCP 60(a), (b)(4) and/or (d)(3) to reflect that it is premised solely on the conduct of Duslak and Sesman as independent contractors and not employees.

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IV. **CONCLUSION**

For the reasons set forth herein, request is made that this motion be granted and that the judgment be set aside or, in the alternative, amended.

DATED this 21st day of January, 2020.

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, Nevada 89148
 Attorneys for Defendants
*SUNRISE VILLAS IX HOMEOWNERS
 ASSOCIATION*

SUPPORTING DECLARATION

I, Leonard Fink, declare as follows:

1. I am an attorney with Springel & Fink, counsel for Sunrise HOA.
2. The factual information contained herein is true and correct based on my own personal knowledge.
3. Attached hereto are true and correct copies of the following:

Exhibit 1	Transcript of October 16, 2019 Hearing
Exhibit 2	Transcript of October 18, 2019 Hearing
Exhibit 3	Motion To Compel Settlement filed on November 1, 2019
Exhibit 4	Transcript of November 7, 2019 Hearing
Exhibit 5	November 8, 2019 Email Correspondence
Exhibit 6	Transcript of November 8, 2019 Hearing
Exhibit 7	Release Agreement
Exhibit 8	Default Judgment filed on December 17, 2019

Exhibit 9 Minutes of proceedings on December 17, 2019

Exhibit 10 Counterclaim filed by Duslak and Sesman.

I declare that the foregoing is true and correct based on my own personal knowledge.

Executed in Las Vegas, Nevada on the date specified below.

Dated: this 21st day of January, 2020.

/s/ Leonard T. Fink, Esq.

By:

LEONARD T. FINK, ESQ.

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 21, 2021**, I served the document described as **MOTION TO SET ASIDE AND/OR AMEND JUDGMENT- ORAL ARGUMENT REQUESTED HEARING REQUESTED** 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