

IN THE SUPREME COURT OF THE STATE OF NEVADA

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SUNRISE VILLAS IX HOMEOWNERS  
ASSOCIATION,

Appellant,

vs.

SIMONE RUSSO,

Respondent.

Case No. 83115 Electronically Filed  
Jun 08 2022 02:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S APPENDIX**  
**VOLUME 5**

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

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# Exhibit 1



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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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15

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 WEDNESDAY, OCTOBER 16, 2019

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

Peggy Isom, CCR 541, RMR

OCTOBER 16, 2019

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2

1 APPEARANCES:

2 FOR THE PLAINTIFF RUSSO:

3

DAVID SAMPSON, LLC

4

BY: DAVID F. SAMPSON, ESQ.

5

200 W. CHARLESTON BOULEVARD

6

LAS VEGAS, NV 89106

7

(702) 605-1099

8

(702) 888-209-4199

9

DAVIDS@INJURYHELPNOW.COM

10

11

12 FOR THE DEFENDANT IES RESIDENTIAL:

13

14

MORRIS SULLIVAN LEMKUL & PITEGOFF

15

BY: WILLIAM LEMKUL, ESQ.

16

BY: CHRISTOPHER A. TURTZO, ESQ.

17

3770 HOWARD HUGHES PARKWAY

18

SUITE 170

19

LAS VEGAS, NV 89169

20

(702) 405-8100

21

TURTZO@MORRISSULLIVANLAW.COM

22

23

24

25

OCTOBER 16, 2019

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3

1 APPEARANCES CONTINUED:

2 FOR THE DEFENDANT CHRIS SCARCELLI:

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

4 BY: DAVID CLARK, ESQ.

5 BY: JULIE FUNAI, ESQ.

6 9900 COVINGTON CROSS DRIVE

7 SUITE 120

8 LAS VEGAS, NV 89144

9 (702) 382-1500

10 DCLARK@LIPSONNEILSON.COM

11

12

13

14 FOR THE DEFENDANT SUNRISE VILLAS IX HOA:

15 SPRINGEL & FINK, LLP

16 BY: LEONARD FINK, ESQ.

17 BY: RAVEN YIM, ESQ.

18 10655 PARK RUN DRIVE

19 SUITE 275

20 LAS VEGAS, NEVADA 89144

21 (702) 804-0706

22 (702) 804-0798 Fax

23 LFINK@SPRINGELFINK.COM

24

25

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4

1

2 APPEARANCES CONTINUED:

3 FOR KEVIN BUSHBAKER:

4

5 SGRO &amp; ROGER

6 BY: JOSPEH MELORO, ESQ.

7 720 SOUTH SEVENTH STREET

8 SUITE #300

9 LAS VEGAS, NV 89101

10 (702) 384-9800

11 (702) 665-4120 Fax

12 JMELORO@SGROANDROGER.COM

13

14

15 \* \* \* \* \*

16

17

18

19

20

21

22

23

24

25

Peggy Isom, CCR 541, RMR

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1 LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 16, 2019

2 1:43 P.M.

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

4 \* \* \* \* \*

12:00:02 5  
6 THE COURT: All right. Good afternoon to  
7 everyone.

8 IN UNISON: Good afternoon, your Honor.

9 THE COURT: And let's go ahead and place our  
01:43:42 10 appearances for the record.

11 MS. SAMPSON: David Sampson with Dr. Russo.

12 MR. FINK: Good afternoon, your Honor.  
13 Leonard Fink and Raven Yim for Sunrise Villas IX.

14 MR. LEMKUL: Good afternoon, your Honor. Will  
01:43:54 15 Lemkul on behalf of Cox Communications and IES.

16 MS. SUMMERS: Christopher Turtzo also for Cox  
17 Communications and IES.

18 MR. MELORIO: Good afternoon, your Honor.  
19 Joseph Meloro for Kevin Bushbaker.

01:44:07 20 MS. FUNAI: Good afternoon, your Honor. Julie  
21 Funai on behalf of the defendant Scarcelli.

22 MR. CLARK: Good morning -- good afternoon,  
23 your Honor. David Clark on behalf of the defendant  
24 Chris Scarcelli.

01:44:17 25 THE COURT: What are we passing out?

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01:44:20 1 THE MARSHAL: The jury, did you get a new one.

2 THE COURT: The jury what?

3 THE MARSHAL: Oh, seating chart.

4 THE COURT: Anyway, Counsel, can we approach  
01:44:32 5 for one second.

6 (A discussion was held off the record.)

7 THE COURT: Okay. Counsel, we had -- let the  
8 record reflect that we had a sidebar discussion for  
9 about four or five minutes regarding specific issues in  
01:49:10 10 the case. And it is my understanding and recollection  
11 that we've come to some sort of agreement; is that  
12 correct, Counsel?

13 MR. FINK: Yes, your Honor.

14 THE COURT: All right. And, Mr. Fink, you  
01:49:18 15 have the floor, sir.

16 MR. FINK: Actually I'm going to let  
17 Mr. Lemkul.

18 THE COURT: Mr. Lemkul, you can have the  
19 floor. Doesn't matter.

01:49:25 20 MR. FINK: Why don't you go.

21 MR. LEMKUL: Yes, that's fine. Actually I was  
22 going to have Mr. Turtzo do it. That's fine, your  
23 Honor well, there's been, obviously, a lot of moving  
24 parts, your Honor. So let me start. And if I mess up,  
01:49:36 25 I'm sure one of the other attorneys will jump in.

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01:49:40 1 On behalf of PW James, the homeowners  
2 association, IES, and Cox we will pay \$355,000 to the  
3 plaintiff in exchange for a release with prejudice of  
4 all his claims. That is subject to the entry of an  
01:49:58 5 order by the Court granting those defendants'  
6 respective good faith settlement motions that we will  
7 file most likely today.

8 THE COURT: Today.

9 MR. LEMKUL: Today for hearing on Friday  
01:50:11 10 morning. We'll file that on an order shortening time.  
11 We'll make sure everybody gets a copy of that, and that  
12 will be done.

13 Also because there are active cross-claims,  
14 and we do not have the defendant Scarcelli and  
01:50:24 15 Bushbaker involved in the deal at the moment, my  
16 understanding is the jury will be allowed to leave  
17 today. We'll have Thursday off in order to allow the  
18 parties to try to work out just a final settlement that  
19 resolves all issues.

01:50:39 20 We would, obviously, continue to work with  
21 Mr. Sampson and his office on that portion of the  
22 transaction or the settlement. And we would come back  
23 Friday morning.

24 I understand that the Court has a full day.  
01:50:50 25 We can bring the jury in and have them there. We can

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01:50:53 1 go forward with the motion. See how the Court rules on  
2 those various motions. And if we have a deal, we can,  
3 obviously, let the jury go home on Friday for good. If  
4 we do not, then we have the jury here and we can  
01:51:06 5 resume.

6 THE COURT: I understand. Okay.

7 MR. LEMKUL: Am I missing anything?

8 MR. TURTZO: No.

9 THE COURT: Okay.

01:51:11 10 MR. LEMKUL: There is one other additional  
11 issue, your Honor, is that if we do have active  
12 cross-claims still pending irrespective of the  
13 good-faith settlement determination, the defendants  
14 that I mentioned would then file summary judgment  
01:51:22 15 motions based on the Court's order on the good-faith  
16 settlement to extinguish the cross-claims. I just  
17 don't know how we'll get it all on, your Honor. The  
18 good-faith settlement motion, your Honor, is one thing.  
19 The summary judgment is a whole different animal, so I  
01:51:35 20 don't even think we could get that on file today, which  
21 is why I'm kind of separating the two things out.

22 THE COURT: Well, I understand. And everyone  
23 remember this. The impact that good-faith settlements  
24 have as it relates to equitable indemnity and  
01:51:48 25 contribution claims.



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01:51:49 1 MR. LEMKUL: Correct, your Honor. Yes.

2 THE COURT: It's pretty clear under the  
3 statute.

4 MR. LEMKUL: Absolutely right.

01:51:53 5 THE COURT: Okay.

6 MR. LEMKUL: So that's where I believe we are,  
7 your Honor.

8 Did I missed anything?

9 Yeah.

01:52:03 10 Your Honor, I'm not aware of any contracts  
11 that exist, so, you know, the entry of -- why don't we  
12 come back on Friday to determine --

13 THE COURT: We'll go into more deal on that.

14 MR. LEMKUL: Correct.

01:52:13 15 THE COURT: But that's one of the discussions  
16 under the statute and the case law, so we'll deal with  
17 that.

18 MR. LEMKUL: Okay. Great.

19 THE COURT: Okay.

01:52:20 20 MR. CLARK: Good afternoon, your Honor. David  
21 Clark for defendant Chris Scarcelli. As we said off  
22 the record and I'll put it on the record now, we were  
23 just made aware of this an hour ago. As I stand here,  
24 I don't have authority from my client to join in any  
01:52:38 25 global settlement at this time. I appreciate the

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01:52:40 1 Court's indulgence in giving us some time to consult  
2 with our clients. But at this time I simply don't have  
3 any authority to say yay or nay.

4 THE COURT: I understand that, Mr. Clark, and  
01:52:50 5 you need authority to do that.

6 MR. CLARK: Right.

7 THE COURT: And I get it.

8 MR. MELORO: Joseph Meloro on behalf of  
9 Mr. Bushbaker. We're in the same position, your Honor.  
01:52:58 10 We need time to speak to the client and work this out.

11 THE COURT: I understand. We'll give you that  
12 time too, sir.

13 MR. MELORO: Thank you.

14 THE COURT: Mr. Fink.

01:53:07 15 MR. FINK: Your Honor, I don't have anything  
16 else to add. Mr. Lemkul laid out the core terms. I  
17 know that we talked about payment issues. I don't know  
18 if those need to be put on the record or not.

19 Dave, the payment terms.

01:53:20 20 MS. SAMPSON: I was going to address some of  
21 those, yeah.

22 MR. FINK: So you want to do that?

23 MS. SAMPSON: Okay.

24 THE COURT: I don't want to overlook  
01:53:27 25 Mr. Sampson. I don't think I have in the two or three

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01:53:29 1 weeks of the jury selection.

2 MS. SAMPSON: No.

3 THE COURT: But, sir, you have the floor.

4 MS. SAMPSON: Thank you, Judge.

01:53:33 5 Plaintiff is in agreement. There are just two  
6 things -- well, it is two things I want to chat about.  
7 We did ask that payment be made as quickly as possible.  
8 The assertion, I believe, what I was told is the check  
9 would be in our office within two weeks of any final  
01:53:52 10 paperwork being signed.

11 I would just ask any paperwork be kept short  
12 and sweet and stick to the terms that we discussed  
13 today.

14 And, you know, I always joke and say, leave my  
01:54:02 15 mother out of it, or something like that. But we'll  
16 stick to the terms of what we discussed today and get  
17 final paperwork authorized.

18 I'm curious -- well, and the other thing  
19 Mr. Lemkul said that he may have misspoke, but he said  
01:54:17 20 it certainly would resolve all issues as to the  
21 settling defendants that were named. And if  
22 Mr. Bushbaker and -- Mr. Bushbaker and Scarcelli join  
23 in, it would settle all issues as to them. There are  
24 other defendants that have been defaulted that we would  
01:54:30 25 just, after this is all resolved, seek leave of the

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01:54:33 1 Court to proceed as appropriate against them.

2 The only other thing -- doggone it. It  
3 slipped my mind. What do you know.

4 Oh, I was curious if there was any way to have  
01:54:47 5 a good-faith determination made orally. I don't know  
6 if that's -- if that would be appropriate. You've  
7 heard the terms that the settling defendants are  
8 willing to do.

9 We can advise the Court as to where the  
01:54:59 10 non-settling defendants are. I think it would be a  
11 pretty easy decision under the case law as to -- as to  
12 whether there should be a good-faith determination. I  
13 don't know. I've never seen one done orally before.  
14 Can't think of why it couldn't be. But I would just  
01:55:13 15 toss that out there. And leave it at that.

16 THE COURT: I understand.

17 MR. CLARK: Your Honor, David Clark for  
18 Mr. Scarcelli. I would humbly ask that if we're going  
19 to be carved out of this, we at least have a chance to  
01:55:27 20 look at the motion.

21 THE COURT: Mr. Clark, I've never flown by the  
22 seat of my pants that I can think of. Whether you  
23 agree or disagree, I do understand the fundamentals of  
24 due process.

01:55:40 25 And the reason why that's important, and it's

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01:55:43 1 really this simple. I don't mean -- you can sit down.

2 It is because I could potentially be right in  
3 the substance but wrong procedurally, and that can  
4 result in something happening that we don't necessarily  
01:55:57 5 need to happen.

6 So what I'm going to do is this, and under the  
7 rules, I can, of course, honor, if requested, an order  
8 shortening time by one of the parties.

9 I think clearly under the facts of this case,  
01:56:14 10 it would meet the requirements of an order shortening  
11 time. So assuming you get whatever motion there is to  
12 me today, I'm not going anywhere. I'll sign it today.  
13 And counsel can serve it and file it today.

14 MR. LEMKUL: Got it.

01:56:29 15 THE COURT: It will be set for 9:00 o'clock  
16 Monday morning. And that will take any potentially  
17 appellate issues off the table in that regard. And  
18 that's what I want.

19 And just as important too, and I do listen.

01:56:44 20 One of the things Mr. Sampson brought up as far as the  
21 scope of the settlement, until the individual  
22 defendants that weren't defaulted in this case they're  
23 not included yet. But potentially they might be  
24 included assuming you get the authority from your  
01:57:00 25 clients.

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01:57:01 1           The next issue was any defaulted defendants in  
2 this case that there's been a default entered  
3 against -- against, they won't be part of the  
4 settlement agreement; is that correct?

01:57:11 5           MR. LEMKUL: Correct, your Honor. That's  
6 correct. I forget about that part. Mr. Sampson is  
7 correct. They're not part of the settlement. And my  
8 understanding is he's going -- Mr. Sampson is going to  
9 have a prove-up hearing next week about that.

01:57:20 10          THE COURT: All right. I just want to make  
11 sure I didn't overlook anything, so we got a pretty  
12 clear record.

13           So what I'm -- I guess what -- here's the  
14 thing.

01:57:30 15          MR. LEMKUL: Your Honor.

16          THE COURT: Go ahead.

17          MR. LEMKUL: I just want to make sure. There  
18 was some confusion, your Honor, what -- we're going to  
19 file the motion for the good-faith settlement  
01:57:36 20 determination today, your Honor. And then the hearing  
21 will be Friday at 9:00 a.m. this week.

22          THE COURT: Yes, sir.

23          MR. LEMKUL: Okay. Thank you.

24          THE COURT: It will be Friday at 9:00 o'clock  
01:57:45 25 sharp. We'll do this then.

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01:57:46 1 MR. LEMKUL: We'll be here.

2 THE COURT: Okay. And last, but not least, I  
3 guess, I have to deal with the jury. And what I will  
4 do is we'll have them come in. And I will explain to  
01:57:56 5 them in very simple terms that I just need time to  
6 discuss issues with you regarding the case, and nothing  
7 more; nothing less.

8 Consequently we'll take tomorrow off, and  
9 we'll be here Friday at 9:30.

01:58:14 10 MR. LEMKUL: That's excellent, Judge.

11 THE COURT: How's that?

12 MR. CLARK: Excellent.

13 MS. SAMPSON: To the extent the Court is not  
14 just willing to fall down on the sword and say it's all  
01:58:21 15 your fault, that sounds like the next best shot.

16 THE COURT: All my fault? Well, I mean --

17 MS. SAMPSON: I mean, you cut us all a break,  
18 but I get it.

19 THE COURT: No. But, I mean, it's -- well, we  
01:58:33 20 are working together; right?

21 MS. SAMPSON: That is correct.

22 MR. LEMKUL: Yeah.

23 MS. SAMPSON: Very much.

24 MR. LEMKUL: I mean, the day off potentially  
01:58:39 25 alleviates the Court's dealing with this any further,

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01:58:41 1 jury and, you know, the rest of us subject to  
2 Mr. Sampson's prove-up hearings that could happen, you  
3 know, I think he wants to do it next week. So...

4 THE COURT: Right. And my point is the one  
01:58:51 5 other -- it's -- you know, what's fascinating about the  
6 whole jury trial process, and I feel this is very  
7 important, of course, we can't tell them the substance  
8 of our discussions today. We can't do that, right?  
9 There's a lot of things you can't tell the jury. But  
01:59:06 10 you do try to be as transparent as you can be, right?

11 MR. LEMKUL: Um-hum.

12 THE COURT: You do. Because you owe that to  
13 them. And that's why even during voir dire I just try  
14 to explain to them what's going on. And maybe the best  
01:59:20 15 way I can handle it is that there's a significant legal  
16 issue that came up today that I have to decide  
17 tomorrow. How does that sound?

18 MS. SAMPSON: That's fine. And I was being  
19 somewhat facetious, but, yeah. That's fine.

01:59:31 20 THE COURT: Does that sound good?

21 MR. LEMKUL: That's absolutely --

22 MS. SAMPSON: That's fine.

23 THE COURT: Yeah.

24 MS. SAMPSON: Given Mr. Lemkul raised the  
01:59:35 25 issue of the prove up, which I was -- I was going to



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01:59:37 1 address that. And they can tell me if they would not  
2 be in agreement. But I think what we would do given  
3 where we're at, we're already in trial. So if all of a  
4 sudden, if the defendants all settle out, we would just  
01:59:50 5 agree to dismiss the jury, have the matter resolved as  
6 a bench trial. Exhibits have already been brought  
7 down. We would stipulate to have them admitted. I put  
8 my client on the stand. Probably his wife. I don't  
9 even know if your Honor would require a doctor. And  
02:00:04 10 then have a -- establish the evidence for your Honor to  
11 come to a decision as to the amount of medical bills  
12 and pain and suffering for the default judgment.

13 Can't imagine they'd have objection, but I  
14 didn't want to catch anybody off guard.

02:00:19 15 MR. LEMKUL: No objection, Judge.

16 THE COURT: I get that. I understand why  
17 nobody would have an objection. But, see, I'm always  
18 looking at the next level. And here's my question on  
19 that. And I think I know the answer. Of course, I  
02:00:29 20 wouldn't be presumptuous just knowing the answer. But,  
21 typically, when you have -- when you seek applications  
22 for default judgment, there's a due process step in the  
23 way; right?

24 MR. LEMKUL: Right.

02:00:41 25 THE COURT: And so all I'm saying is this: I

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02:00:44 1 would love to be able to circumvent the process.

2 But, Mr. Sampson, I don't know if I can do  
3 that or not. If you want to look at that and explore  
4 it for me, I always have an open mind. But my major  
02:00:57 5 concern is this. I don't mind telling everybody this.  
6 At the end of the day, I don't mind making the tough  
7 calls. But I always look at it, okay, this decision I  
8 make, how confident am I when it comes to all appellate  
9 issues.

02:01:11 10 MR. LEMKUL: Right.

11 THE COURT: Right? That's kind of how I frame  
12 things. And that's why I try not to let emotions get  
13 involved at all. Because I'm sitting back saying to  
14 myself, Okay, what will happen on appeal. And the only  
02:01:21 15 reason I say that is this. Like, when I had a really  
16 difficult construction defect issue as it related to  
17 fees and costs with Mr. Fink's partner, right? And it  
18 was a very unique issue.

19 And I think at the time I was probably the  
02:01:36 20 first judge to step out there and say, wait a second  
21 here. There is an issue of proximate cause as related  
22 to it. I treated it like any other special damage. I  
23 performed a calculation and so on and so forth. And it  
24 was really an important issue at the time. Went up on  
02:01:51 25 appeal. Was affirmed, right?

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02:01:53 1 MR. FINK: Yes, sir.

2 THE COURT: And actually, I don't mind telling  
3 you this, Mr. Fink, I think that if there wasn't a  
4 change in Chapter 40, they'd have issued a published  
02:02:01 5 decision on that.

6 MR. FINK: I agree.

7 THE COURT: Yeah. But that's my point. You  
8 know, you want to make sure you get it right.

9 MR. LEMKUL: Right.

02:02:06 10 THE COURT: That's what I try to do. And  
11 whether you agree or disagree, I'm going to respect the  
12 process. Because didn't somebody bring that up? You  
13 got to respect it. You do. We were talking one day.  
14 We saying you got to respect the process. That's -- at  
02:02:22 15 the end of the day that's all we have.

16 So is there anything else?

17 MS. SAMPSON: No, Judge.

18 MR. LEMKUL: I don't think so.

19 THE COURT: All right. Okay. So we're going  
02:02:32 20 to bring the panel in. And I will keep it as generic,  
21 benign as possible. And that's all we can do.

22 MR. LEMKUL: Understood, Judge.

23 THE MARSHAL: As a reminder, we have to fill  
24 the two jurors -- the two jurors that were released out  
02:02:56 25 of the box when we get back.

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02:02:58 1 THE COURT: Do we need to do that now? I  
2 don't think so.

3 MS. SAMPSON: I think we can just so that the  
4 ones that are leaving don't have to come back Friday.

02:03:05 5 THE MARSHAL: True.

6 MS. SAMPSON: I think that's smart.

7 THE COURT: Did we release them already?

8 MS. SAMPSON: I thought it was --

9 THE MARSHAL: The two -- the two that we  
02:03:09 10 talked about yesterday, I released them.

11 THE COURT: They've been released.

12 You know what, let's make it a little -- bring  
13 them in. Put them in the box. And then after we do  
14 that, then I'll explain it to them. I think that has a  
02:03:20 15 little more protocol --

16 THE MARSHAL: Yes, your Honor.

17 THE COURT: -- for the proceeding.

18 THE MARSHAL: Yes, your Honor. I'll be right  
19 back.

02:17:23 20 (The prospective jurors enter the  
21 courtroom.)

22 THE COURT: All right. Do the parties  
23 stipulate to the presence of the panel?

24 IN UNISON: Yes, your Honor.

02:18:37 25 THE COURT: Okay. Ladies and gentlemen of the

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02:18:40 1 panel, good afternoon.

2 IN UNISON: Good afternoon.

3 THE MARSHAL: Your Honor, I have two seats.

4 THE COURT: Yeah. You can proceed.

02:18:45 5 (The Marshal seated Prospective Jurors  
6 173 and 175.)

7 THE COURT: All right. Ladies and gentlemen,  
8 once again good afternoon.

9 IN UNISON: Good afternoon.

02:19:27 10 THE COURT: I just want to remind you of a  
11 couple of points, and I think this is really important  
12 to point out.

13 Just because you're not in open court and  
14 you're here, doesn't mean or stand for the proposition  
02:19:39 15 that the case isn't moving forward. Because what  
16 happens many times during trial, I have to meet with  
17 the lawyers, and we have to work on specific legal  
18 issues. Does everybody understand that?

19 And I hate to say it, but it's just like  
02:19:59 20 Mr. Rice indicated in his letter, and I think there's  
21 one important point is very insightful because he  
22 understood this when he was part of the military and  
23 he -- it's funny I never thought about it this way, but  
24 it's somewhat similar to jury service. He said, "I'm  
02:20:17 25 used hurry up and waiting," Right? Remember that in

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02:20:20 1 his letter? And he said that, and that's true.

2 But that doesn't stand for the proposition  
3 that the jury system is not at work. That's probably  
4 the best way I can say that.

02:20:37 5 And as far as the current case is concerned,  
6 as far as the ultimate outcome is concerned we're still  
7 on track. I think that's the most important thing you  
8 want to know; right? We're not going to go beyond the  
9 31st, so we're still on track. We just have to make  
02:20:51 10 some adjustments. And that's really and truly what it  
11 comes down to.

12 Just as important too, there's one significant  
13 legal issue I have to meet with and -- because I've  
14 been meeting with the lawyers since 1:00 o'clock. From  
02:21:07 15 a historical point I was on the bench this morning at  
16 9:00 o'clock until about 12:30.

17 And the reason why I think that's important  
18 because I have other cases I have to deal with. So  
19 this is what we're going to do. Because there's a few  
02:21:22 20 more items I have to work out with them that deal  
21 specifically with this case. But I don't want to waste  
22 your time sitting and waiting; right?

23 I just don't want to do that. And so I  
24 anticipate we'll be together at least another hour or  
02:21:41 25 two today, and then I need to spend time with them

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02:21:44 1 tomorrow. Do you understand that? And so, but once  
2 again, I want you to understand this. It doesn't  
3 impact your commitment to the October 31.

4 Right, Counsel?

02:21:57 5 MR. FINK: Yes, your Honor.

6 MR. LEMKUL: Correct.

7 THE COURT: We're still on track. Remember  
8 that. We are.

9 So anyway, from an efficiency perspective,  
02:22:09 10 that's probably the best way I can say it, because it  
11 appears to me that once these final legal issues are  
12 resolved, it should streamline things potentially.

13 So, anyway, what we're going to do is this,  
14 we're going to recess right now, so you can go home.  
02:22:29 15 And I see a couple of smiles. We're going to take  
16 tomorrow off. And then we're going to meet at 9:30.  
17 Does everybody understand that, and that's 9:30 Friday  
18 morning.

19 All right. And so, and once again, remember  
02:22:47 20 this, it has no impact on October 31. We're still on  
21 track. Because remember at the very beginning of the  
22 case we focused on how long would this take. And I  
23 know some people had commitments and things that were  
24 in the way. But everyone here said, Look, Judge,  
02:23:04 25 that's all I can do.

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02:23:06 1 Right. So that's all you can do. I just want  
2 to make sure you understand that there's no change in  
3 the case itself as far as time commitment.

4 And so ladies and gentlemen, and I have to do  
02:23:16 5 this:

6 You're admonished not to converse amongst  
7 yourselves or with anyone else on any subject connected  
8 with this trial or to read, watch, or listen to any  
9 report of or commentary on the trial.

02:23:29 10 I get that. You really haven't heard the  
11 facts; right? The only thing you can talk about is  
12 this: The jury selection process. That's about all  
13 you can talk about.

14 But anyway, those are the rules. And just as  
02:23:40 15 important too, you can -- once the process is over,  
16 please feel free to, if you want to, to get on  
17 Facebook, if you want to Twitter and talk about the  
18 preamble and those types of things you can do that:  
19 Right? But that's after you're discharged. Does  
02:23:59 20 everybody understand that? I just want to make sure.

21 So anyway with that in mind, I'm going to put  
22 you into the temporary custody and control of the  
23 Marshal. And we hope -- hopefully he does a really  
24 great job, and he does, to make sure you're on track.  
02:24:15 25 And then we'll see each other at 9:30 a.m. Friday



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02:24:19 1 morning.

2 THE MARSHAL: 9:30, October 19, your Honor.

3 THE COURT: Okay.

4 THE MARSHAL: Or 18. I'm sorry.

02:24:25 5 THE COURT: 18.

6 (The prospective jurors exit the courtroom.)

7 THE COURT: Okay. Do you think I softened it  
8 a little bit?

9 MR. FINK: I think so. I think we're going to  
02:25:36 10 have to sit here for a little bit, since you told them  
11 we were --

12 (Unreportable cross-talk)

13 MR. CLARK: Can't leave right now.

14 MS. SAMPSON: Well, they --

02:25:43 15 THE COURT: But, anyway, I'm going to go ahead  
16 and step down, but good luck in your endeavors.

17 IN UNISON: Thank you, your Honor.

18 MR. LEMKUL: Judge, thank you.

19 THE COURT: Hopefully, you can get done.

20

21 (Proceedings were concluded.)

22

23 \* \* \* \* \*

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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

# Exhibit 2

OCTOBER 18, 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  
MOTIONS

15

16

17

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

18

DISTRICT COURT JUDGE

19

20

DATED FRIDAY, OCTOBER 18, 2019

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25

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

Peggy Isom, CCR 541, RMR

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 2

1 APPEARANCES:

2 FOR THE PLAINTIFF RUSSO:

3

DAVID SAMPSON, LLC

4

BY: DAVID F. SAMPSON, ESQ.

5

200 W. CHARLESTON BOULEVARD

6

LAS VEGAS, NV 89106

7

(702) 605-1099

8

(702) 888-209-4199

9

DAVIDS@INJURYHELPNOW.COM

10

11

12 FOR THE DEFENDANT IES RESIDENTIAL:

13

14

MORRIS SULLIVAN LEMKUL & PITEGOFF

15

BY: CHRISTOPHER A. TURTZO, ESQ.

16

3770 HOWARD HUGHES PARKWAY

17

SUITE 170

18

LAS VEGAS, NV 89169

19

(702) 405-8100

20

TURTZO@MORRISSULLIVANLAW.COM

21

22

23

24

25

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 3

1 APPEARANCES CONTINUED:

2 FOR THE DEFENDANT CHRIS SCARCELLI:

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

4 BY: DAVID CLARK, ESQ.

5 BY: JULIE FUNAI, ESQ.

6 9900 COVINGTON CROSS DRIVE

7 SUITE 120

8 LAS VEGAS, NV 89144

9 (702) 382-1500

10 DCLARK@LIPSONNEILSON.COM

11

12

13

14 FOR THE DEFENDANT SUNRISE VILLAS IX HOA:

15 SPRINGEL & FINK, LLP

16 BY: LEONARD FINK, ESQ.

17 10655 PARK RUN DRIVE

18 SUITE 275

19 LAS VEGAS, NEVADA 89144

20 (702) 804-0706

21 (702) 804-0798 Fax

22 LFINK@SPRINGELFINK.COM

23

24

25

OCTOBER 18, 2019

RUSSO V. COX COMMUNICATIONS 4

1 APPEARANCES CONTINUED:

2 FOR KEVIN BUSHBAKER:

3

4 SGRO & ROGER

5 BY: JOSPEH MELORO, ESQ.

6 720 SOUTH SEVENTH STREET

7 SUITE #300

8 LAS VEGAS, NV 89101

9 (702) 384-9800

10 (702) 665-4120 Fax

11 JMELORO@SGROANDROGER.COM

12

13

14 \* \* \* \* \*

15

16

17

18

19

20

21

22

23

24

25

Peggy Isom, CCR 541, RMR

OCTOBER 18, 2019

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

2 9:09 A.M.

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

4 \* \* \* \* \*

5  
6 THE COURT: All right. Good morning. Let's  
7 go ahead and place our appearances for the record.

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

9 MR. FINK: Good morning, your Honor. Leonard  
09:09:55 10 Fink for Sunrise Villas IX HOA.

11 MR. TURTZO: Good morning, your Honor.  
12 Christopher Turtzo for IES Residential and Cox  
13 Communications Las Vegas.

14 MR. MELORIO: Good morning, your Honor.  
09:10:04 15 Joseph Meloro for Kevin Bushbaker.

16 MS. FUNAI: Good morning, your Honor. Julie  
17 Funai on behalf of the defendant Chris Scarcelli.

18 MR. CLARK: And good morning, your Honor.  
19 David Clark on behalf of the defendant Chris Scarcelli.

09:10:16 20 THE COURT: All right. Once again good  
21 morning. I see there's one matter on calendar this  
22 morning. But did we come to some sort of resolution  
23 that would make the issue moot; do we know?

24 MR. FINK: Your Honor, we have -- as of last  
09:10:26 25 night about 4:30 4:45, we have a global settlement



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

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

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

6 THE COURT: I understand.

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

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

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

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

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

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

21 MS. SAMPSON: Correct. That is correct.

22 MR. CLARK: I guess --

23 THE COURT: Mr. Clark, sir.

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

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

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

3 THE COURT: Okay. Mr. Meloro.

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

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

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

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

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

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

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

2 MS. SAMPSON: Ones that are actively litigated

3 and PW James.

4 THE COURT: Yes.

09:12:30 5 MR. TURTZO: Maybe out of the abundance of

6 caution given how long --

7 THE COURT: Mr. Turtzo, go ahead.

8 MR. TURTZO: -- it's taken to get to this

9 point, I think we ought to make sure we have a clear

09:12:40 10 record of we put material terms of the partial

11 settlement on the record on Wednesday. Now we've got

12 some two additional parties joining in. I think unless

13 anybody disagrees, it would be good to just

14 re-kind-of-confirm exactly what the additional

09:12:57 15 settlement terms are.

16 MR. FINK: Agreed.

17 MR. TURTZO: Okay.

18 MS. SAMPSON: No objection.

19 MR. TURTZO: As far as I understand it, so the

09:13:04 20 settlement payment to the plaintiff is not -- has not

21 changed. That's still the amount that was put on the

22 record \$355 thousand. It's being funded by insurance

23 carriers on behalf of Cox and IES Residential and

24 Sunrise Villas IX.

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

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

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

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

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

17 THE COURT: Everyone agree.

18 MR. CLARK: Agreed.

19 MR. MELORIO: Yes, your Honor.

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

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

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09:14:35 1 action.

2 THE COURT: I understand.

3 Is that correct, Mr. Sampson?

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

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

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

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

6 THE MARSHAL: That's all right.

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

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

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

16 MR. FINK: Not against --

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

19 THE COURT: And/or equitable indemnity.

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

21 MR. FINK: Right.

22 MR. TURTZO: Right.

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

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

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

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

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

11 MR. CLARK: Doctor's appointment.

12 THE COURT: Doctor's appointment.

13 MR. FINK: Doctor's appointment.

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

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

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

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

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

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

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

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

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

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

21 MR. FINK: I think.

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

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

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



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

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

3 THE MARSHAL: Yes, your Honor.

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

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

13 MS. SAMPSON: That's right.

14 THE COURT: So anyway...

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

17 THE COURT: Yes.

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

21 MR. CLARK: Correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 THE COURT CLERK: Your Honor.

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

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

09:21:07 25 THE COURT: Right.

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

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

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

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

17 MR. TURTZO: That's right.

18 THE COURT: That's right.

19 MR. FINK: Really.

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

21 MR. FINK: For all of us.

22 THE COURT: For everybody. All right.

23 IN UNISON: Thank you, Judge.

24 THE COURT: Once again, congratulations.

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

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

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

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

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

8 IN UNISON: Good morning.

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

13 THE MARSHAL: It was like Christmas.

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

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

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

Peggy Isom, CCR 541, RMR

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

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

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

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

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

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

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

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

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

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

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

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

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



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09:50:35 1 And this is -- this is one of the most important  
2 aspects of the democracy we just don't talk about.  
3 And, for example, I'm on the Eighth Judicial  
4 District Court Jury Commission. And right now we're  
09:50:52 5 looking at ways we can make service easier. But it's  
6 tough. It is. We're just trying to figure out -- we'd  
7 love to make it -- if it was up to me, they would pay  
8 more money for jury service, you know. I would. I  
9 mean, I think if you're going to come down and serve,  
09:51:07 10 at a minimum when you're here, they should pay you \$20,  
11 \$25 an hour; something like that; right? But I'm not  
12 in charge.

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

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

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

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

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

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

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

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

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

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

6 Once again, I just want to thank everyone.

7 Mr. Marshal.

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

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

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

14 THE MARSHAL: Thank you, your Honor.

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

18 THE COURT: And everyone, enjoy your weekend.

19 IN UNISON: Thank you.

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

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

24 IN UNISON: Thank you, your Honor.

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

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

3 MR. TURTZO: We'll --

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

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

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

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

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

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

17 THE COURT: Okay. We'll --

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

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

21 MS. SAMPSON: Thank you very much.

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

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

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

12 THE COURT: No, no, no.

13 MR. FINK: Most judges would have.

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

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

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

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

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

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

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

17 MR. TURTZO: Yes.

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

22 MR. TURTZO: Yes, it is.

23 THE COURT: Yes.

24 MR. TURTZO: Thank you, your Honor.

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

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MS. FUNAI: Thank you, your Honor.

(Proceedings were concluded.)

\* \* \* \* \*

Peggy Isom, CCR 541, RMR

OCTOBER 18, 2019

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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.

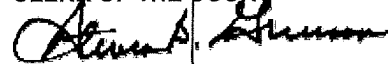
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Peggy Isom, CCR 541, RMR



# Exhibit 3

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1 **MCOM**

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. )

Date of Hearing: 11/7/19

Time of Hearing: 9:30am

DEPARTMENT XVI

NOTICE OF HEARING

DATE 11/7/19 TIME 9:30am

APPROVED BY: 

29 **PLAINTIFF'S MOTION TO COMPEL SETTLEMENT ON ORDER SHORTENING**  
30 **TIME**

31 COMES NOW Plaintiff, SIMONE RUSSO, by and through his attorneys of record and  
32 hereby moves this Court to compel the settlement reached in this matter on October 16, 2019  
33 pursuant to the terms agreed upon in Court on that date.

34 ///

1                    **AFFIDAVIT IN SUPPORT OF ORDER SHORTENING TIME**

2 STATE OF NEVADA            )  
3                                    ) SS.  
4 COUNTY OF CLARK        )

5            DAVID SAMPSON, ESQ., having been duly sworn states as follows:

- 6            1. I am an attorney duly licensed to practice law in the State of Nevada and an attorney  
7                                    with the law firm of The Law Office of David Sampson, LLC.
- 8            2. I am personally familiar with the facts and circumstances surrounding this matter and am  
9                                    competent to testify hereto.
- 10           3. That the case of Russo v. COX, et al., reached a settlement with the Answering  
11                                    Defendants in this matter on October 16, 2019. On that date the parties placed the terms  
12                                    of the settlement on the record. Counsel for Defendants BUSHBAKER and SCARCELI  
13                                    advised they did not have confirmation at that time as to whether their clients would  
14                                    agree to the settlement. The settling Defendants indicated they would file a motion for  
15                                    good faith determination, which the Court subsequently set for October 18, 2019.
- 16           4. On October 18, 2019 Counsel for Defendants BUSHBAKER and SCARCELI advised the  
17                                    Court that their clients agreed to the settlement.
- 18           5. During the discussion of the terms of the settlement, Defendants stated they wanted Dr.  
19                                    Russo to sign a release. Dr. Russo agreed to sign a release so long as it did not include  
20                                    any terms that were not expressly agreed to on the record when the settlement terms  
21                                    were placed on the record. All parties agreed that such would be the case.
- 22           6. Defendants also advised that the settlement checks would be delivered to my office  
23                                    within two weeks of Dr. Russo signing the agreed upon release. I advised that such was  
24                                    acceptable, so long as there was no delay in Defendants providing me with a release. I  
25
- 26  
27  
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1 specifically cautioned that I did not want the Defendants to take two weeks to get a  
2 release to me for Dr. Russo to sign, and then wait an additional two weeks to make  
3 payment. Defendants all agreed to provide me with a release in short order.  
4

5 7. The terms of the settlement included the fact that defaulted parties Duslak and Sessman  
6 were not a part of the settlement, that Dr. Russo would retain all rights to pursue Duslak  
7 and Sessman to the full extent, and that nothing about the settlement would impact Dr.  
8 Russo's rights to pursue and collect against Duslak and Sessman would be impeded in  
9 any fashion. Defendants all agreed to this provision.  
10

11 8. As of the filing of this motion, October 31, 2019, over two weeks after settlement was  
12 reached, **Defendants have still not provided me with an agreed upon release to**  
13 **conclude this matter.** Counsel for SUNRISE HOA provided a proposed release on  
14 Monday October 21, 2019, but stated that his client had NOT yet agreed to the terms of  
15 the release. *See* Exhibit "1" at P. 7.  
16

17 9. On October 21, 2019 I provided the Defendants with proposed revisions to the terms of  
18 the release so it would match what was agreed to in open Court. *See*, Exhibit "1" at P. 7.  
19 Counsel for Defendant BUSHBAKER provided additional revisions. *Id* at P. 5-6. None  
20 of the other Defendants provided any comment on the proposed release or the proposed  
21 revisions.  
22

23 10. On Monday October 28, 2019 I advised that, since I had not heard from anyone in a  
24 week regarding my proposed revisions, I would print the release with the proposed  
25 revisions from Dr. Russo and Mr. Bushbaker, have Dr. Russo sign the same, and  
26 expected the settlement checks within two weeks. My October 28, 2019 message stated:  
27

28 A week ago Mr. Fink provided a proposed settlement release as  
required by the Court. As you surely recall, Plaintiff insisted, and the

1 Court agreed, that there should not be any undue delay in Defendants  
2 providing the release (final, not proposed) to Plaintiff. The same day Mr.  
3 Fink provided the proposed release I responded with proposed changes.  
4 Mr. Meloro also provided comments. Having not heard from anyone else  
5 in the last week regarding the proposed release nor the proposed changes  
6 or comments, I have finalized the release which includes my  
7 proposed changes and addresses Mr. Meloro's comments. I have attached  
8 the same hereto for your convenience. Be advised Dr. Russo will sign the  
9 same today and that, therefore, the checks need to be delivered to my  
10 office within 14 days as agreed.

11 *Id* at P. 4.

12 11. After not having responded to my communications in a week, Counsel for SUNRISE  
13 responded to my October 28, 2019 email in 16 minutes, saying "Dave, thanks, but I did  
14 say that my client had not yet approved the agreement when I sent it out. Although I  
15 don't foresee an issue, I need to be clear on that. I also have the settlement check here, so  
16 once we get this done and done I can get it to you." *Id* at P. 3-4.

17 12. I wrote back on October 28, 2019 I wrote to Defendants advising "I patiently waited a  
18 week for any "approval" on proposed amendments. Having heard nothing from either of  
19 you (COX and SUNRISE) it is time to move forward. There will be no further delay."  
20 *Id* at P. 3.

21 13. Counsel for SUNRISE responded two minutes later, saying "Well, no. I drafted the  
22 agreement as I said I would, last weekend and had asked for any input on the agreement  
23 and made it clear that my client had not approved the language. So, if there are no  
24 further changes, I'll ask my client if they are okay with it." *Id* at P. 3.

25 14. Counsel for COX also contacted my office on October 28, 2019 stating "We are in the  
26 same position [as SUNRISE] regarding approval of the release. I will follow up shortly  
27 on status. *See* Exhibit "2".

28 15. Counsel for COX sent another email on October 28, 2019 which stated

1 Minor redlines on behalf of IES and Cox are attached. I do not think these  
2 materially affect the prior version. As I indicated earlier this morning, we  
3 also do not have client approval on the release language yet. Also, my  
4 recollection from the hearings placing the terms on the record is that *a*  
5 *definite payment deadline was not agreed upon*; instead, the parties  
6 agreed that time was of the essence. Nonetheless, we are working to obtain  
7 our client's share of the funds as quickly as possible.

8 *See*, Exhibit "1" at P. 2 (emphasis added).

9 16. I wrote back to Defendants on October 28, 2019 and advised,

10 I have incorporated Mr. Turtzo's proposed changes, and have added  
11 language clarifying that Plaintiff retains all rights to pursue any and all  
12 actions both against, and on behalf of the non-settling defendants (see  
13 attached). I will have Dr. Russo execute the attached release and look  
14 forward to exchanging the same for the settlement check within 14 days as  
15 agreed.

16 *Id* at P. 2.

17 17. On October 29, 2019 Counsel for SUNRISE sent a revised release to my office that  
18 specifically prevented Dr. Russo from pursuing his claims against Duslak and Sessman.

19 *Id* at P. 1. While the revised language permits the claim to proceed, it prevents Dr.  
20 Russo from collection efforts against the remaining Defendants. *Id*. Even though  
21 counsel for SUNRISE sent the revised release to my office, counsel made it clear that  
22 *SUNRISE had not yet agreed to any release language. Id.*

23 18. I wrote Defendants on October 29, 2019 stating "my client is not releasing any rights  
24 that were not discussed in Court. We never discussed releasing rights against that [arise]  
25 from Duslak and Sessman." *Id* at P. 1.

26 19. Counsel for SUNRISE wrote back saying "Dave, I completely understand that. You did  
27 not release those claims. I just need to get my carrier to sign off on the language." *Id* at  
28 P. 1.

1 20. Counsel for SCARCELLI has not provided any response to the proposed release or the  
2 proposed revisions and has instead remained completely silent on the matter.

3 21. As of the filing of this motion *none of the Defendants, with the exception of Mr.*  
4 *Bushbaker, have provided my office with a release they are prepared to exchange for*  
5 *the settlement checks.* Additionally, as SUNRISE is now insisting on language that  
6 would impact Dr. Russo's claims against Duslak and Sessman, it is clear the Court needs  
7 to intervene in this matter to make sure it is concluded timely and according to the terms  
8 placed on the record on October 16, 2019.

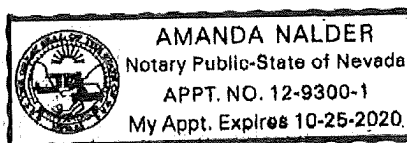
9 22. As the parties agreed to resolve this matter in short order, and as the Defendants, with  
10 the exception of Mr. Bushbaker, are not acting to resolve this matter in short order, this  
11 matter needs to be heard on an order shortening time.  
12  
13  
14

15 DATED this 31<sup>st</sup> day of October, 2019.

16  
17  
18 DAVID F. SAMPSON, ESQ.

19 SUBSCRIBED AND SWORN TO before me  
20 this 31 day of October, 2019

21  
22 Notary Public in and for said County and State.  
23  
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ORDER SHORTENITNG TIME

Good cause appearing, it is hereby ordered that the foregoing PLAINTIFF'S MOTION TO COMPEL SETTLEMENT will be set for hearing before the above-captioned Court and Department on the 7<sup>th</sup> day of November, 2019 at 9:30 (am) pm, or as soon thereafter as the matter may be heard..

Dated this 1<sup>st</sup> day of NOV ~~October~~, 2019

  
DISTRICT COURT JUDGE 

Submitted by:

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ David Sampson   
DAVID F. SAMPSON, ESQ.  
Nevada Bar No.6811  
LAW OFFICE OF DAVID SAMPSON, LLC.  
630 S. 3rd Street  
Las Vegas, NV 89101  
Fax No: 888-209-4199  
Email:david@davidsamsponlaw.com  
Attorney for Plaintiff



1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2            The Court is well aware of the facts of this matter and in fact was present when the terms  
3 of the settlement were placed on the record. Dr. Russo incorporates by reference the affidavit of  
4 David Sampson, Esq., above. Dr. Russo seeks only to conclude this matter as agreed on the  
5 record October 16, 2019 and again on October 18, 2019. The parties agreed that the Answering  
6 Defendants would be released, in addition to PW JAMES, that the settlement would in no way  
7 impact Dr. Russo's rights against Duslak and Sessman, or his ability to collect against them, and  
8 that the settlement would be resolved in short order. Indeed Defendants stated that the checks  
9 would be delivered within two weeks of the release being signed Mr. Sampson specifically  
10 stated that he did not want the Defendants to take two weeks, or longer, to provide a release for  
11 Dr. Russo to sign. As of the filing of this motion more than two weeks have passed and  
12 Defendants have still not provided a release Dr. Russo can sign to exchange for the settlement  
13 checks.  
14

15  
16            This matter settled pursuant to the terms placed on the record on October 16, 2019 and  
17 October 18, 2019. When the Defendants required a release, Dr. Russo asked that the terms  
18 placed on the record, and only those terms, be codified in a release. As Defendants, with the  
19 apparent exception of Mr. Bushbaker, have not agreed to ANY release as of yet, and as  
20 SUNRISE is now seeking to have the release include Duslak and Sessman, this Court should  
21 enter an Order compelling Defendants to complete the settlement of this matter, tender the full  
22 funds to Dr. Russo immediately, and that any release, if any, be strictly limited to what was  
23 discussed on the record on October 16, 2019 and October 18, 2019, including the fact that Dr.  
24 Russo's claims and rights against Duslak and Sessman not be impeded in any manner.  
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1 When the settlement terms were placed on the record, and the Defendants said they  
2 would tender payment within 14 days of Dr. Russo signing the check, counsel for Dr. Russo  
3 specifically noted that he did not want Defendants to drag their feet and wait two weeks or more  
4 to provide Dr. Russo with a release he could sign, and then wait an additional two weeks before  
5 tendering payment. Defense counsel scoffed at Dr. Russo's counsel's suggestion that the  
6 release would take two weeks to complete. Yet as of the filing of this motion it has been two  
7 weeks and Defendants have still not provided a release their own clients would agree to  
8 exchange for the settlement checks. SUNRISE's latest efforts to submarine Dr. Russo's claim  
9 against Doslak and Sessman mandate that the Court simply enforce the settlement and require  
10 Defendants to immediately tender payment.  
11  
12

13 **CONCLUSION**

14 For the foregoing reasons Plaintiff requests this Court enforce the agreed upon  
15 settlement in this matter.  
16

17 DATED THIS 31<sup>st</sup> day of October, 2019

18 LAW OFFICE OF DAVID SAMPSON, LLC.

19  
20 BY: /s/ David Sampson 

21 DAVID F. SAMPSON, ESQ.

22 Nevada Bar No.6811

23 LAW OFFICE OF DAVID SAMPSON, LLC.

24 630 S. 3rd Street

25 Las Vegas, NV 89101

26 Fax No: 888-209-4199

27 Email:david@davidsamsonlaw.com

28 Attorney for Plaintiff

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of THE LAW OFFICE OF DAVID SAMPSON, and that  
on this 31<sup>st</sup> day of October, 2019, I served a copy of the foregoing **MOTION** as follows:

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

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

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

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

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

/s/ Amanda Nalder

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

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**EXHIBIT "1"**



10/31/2019

Gmail - RE: Russo - proposed settlement agreement



David Sampson &lt;davidsampsonlaw@gmail.com&gt;

**RE: Russo - proposed settlement agreement**

1 message

**Leonard Fink** <lfink@springelfink.com>

Tue, Oct 29, 2019 at 11:26 AM

To: David Sampson &lt;davidsampsonlaw@gmail.com&gt;

Cc: "Christopher A. Turtzo" &lt;turtzo@morrisullivanlaw.com&gt;, David Clark &lt;DClark@lipsonneilson.com&gt;, Joseph Meloro &lt;jmeloro@sgroandroger.com&gt;, Julie Funai &lt;JFunai@lipsonneilson.com&gt;, "Thomas G. Levine" &lt;tlevine@springelfink.com&gt;, Will Lemkul &lt;Lemkul@morrisullivanlaw.com&gt;

Dave, I completely understand that. you did not release those claims. I just need to get my carrier to sign off on the language.

**From:** David Sampson <davidsampsonlaw@gmail.com>**Sent:** Tuesday, October 29, 2019 10:50 AM**To:** Leonard Fink <lfink@springelfink.com>**Cc:** Christopher A. Turtzo <turtzo@morrisullivanlaw.com>; David Clark <DClark@lipsonneilson.com>; Joseph Meloro <jmeloro@sgroandroger.com>; Julie Funai <JFunai@lipsonneilson.com>; Thomas G. Levine <tlevine@springelfink.com>; Will Lemkul <Lemkul@morrisullivanlaw.com>**Subject:** Re: Russo - proposed settlement agreement

I will look this over when I get a chance, but my client is not releasing any rights that were not discussed in Court. We never discussed releasing any rights against anyone that aspire from Duskak and Sessman.

On Tue, Oct 29, 2019 at 10:41 AM Leonard Fink <lfink@springelfink.com> wrote:

Here is another draft of the agreement that includes my carriers' specific names (per their request) and at least tries to make it clear that while Plaintiff is reserving all rights to proceed against Duskak and Sessman, that it does not impact any of the settling parties or their insurers, at least as it relates to the settled parties.

I also need to have my insurer sign off on the language in section 4 ii. That wasn't in the original draft and I'm sure that you can understand that I don't want to get hung up on a malpractice claim when you get your judgment against them and then try to assert Gallegos.

Lenny

**From:** David Sampson <davidsampsonlaw@gmail.com>**Sent:** Monday, October 28, 2019 2:25 PM**To:** Christopher A. Turtzo <turtzo@morrisullivanlaw.com>**Cc:** Leonard Fink <lfink@springelfink.com>; David Clark <DClark@lipsonneilson.com>; Joseph Meloro <jmeloro@sgroandroger.com>; Julie Funai <JFunai@lipsonneilson.com>; Thomas G. Levine

10/31/2019

Gmail - RE: Russo - proposed settlement agreement

<tlevine@springelfink.com>; Will Lemkul <Lemkul@morrissullivanlaw.com>

**Subject:** Re: Russo - proposed settlement agreement

I have incorporated Mr. Turtzo's proposed changes, and have added language clarifying that Plaintiff retains all rights to pursue any and all actions both against, and on behalf of the non-settling defendants (see attached). I will have Dr. Russo execute the attached release and look forward to exchanging the same for the settlement check within 14 days as agreed.

Thank you,

On Mon, Oct 28, 2019 at 1:06 PM Christopher A. Turtzo <turtzo@morrissullivanlaw.com> wrote:

Minor redlines on behalf of IES and Cox are attached. I do not think these materially affect the prior version. As I indicated earlier this morning, we also do not have client approval on the release language yet. Also, my recollection from the hearings placing the terms on the record is that a definite payment deadline was not agreed upon; instead, the parties agreed that time was of the essence. Nonetheless, we are working to obtain our client's share of the funds as quickly as possible.

-Chris.

**Christopher A. Turtzo**

Partner



**MORRIS • SULLIVAN • LEMKUL**

**Nevada Office**

**Please note new address for NV Office**  
3960 Howard Hughes Parkway, Suite 420  
Las Vegas, NV 89169  
Telephone: (702) 405-8100  
Telecopier: (702) 405-8101

**California Office**

9915 Mira Mesa Blvd, Suite 300  
San Diego, CA 92131  
Telephone: (858) 566-7600  
Telecopier: (858) 566-6602

[www.morrissullivanlaw.com](http://www.morrissullivanlaw.com)

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10/31/2019

Gmail - RE: Russo - proposed settlement agreement

**From:** Leonard Fink <lfink@springelfink.com>  
**Sent:** Monday, October 28, 2019 11:29 AM  
**To:** David Sampson <davidsampsonlaw@gmail.com>  
**Cc:** Christopher A. Turtzo <turtzo@morrisullivanlaw.com>; David Clark <DClark@lipsonneilson.com>; Joseph Meloro <jmeloro@sgroandroger.com>; Julie Funai <JFunai@lipsonneilson.com>; Thomas G. Levine <tlevine@springelfink.com>; Will Lemkul <Lemkul@morrisullivanlaw.com>  
**Subject:** RE: Russo - proposed settlement agreement

I'm with you on that part of it. we can conference the judge if necessary

**From:** David Sampson <davidsampsonlaw@gmail.com>  
**Sent:** Monday, October 28, 2019 11:26 AM  
**To:** Leonard Fink <lfink@springelfink.com>  
**Cc:** Christopher com> <turtzo@morrisullivanlaw.com>; David Clark <DClark@lipsonneilson.com>; Joseph Meloro <jmeloro@sgroandroger.com>; Julie Funai <JFunai@lipsonneilson.com>; Thomas G. Levine <tlevine@springelfink.com>; William Lemkul <Lemkul@morrisullivanlaw.com>  
**Subject:** Re: Russo - proposed settlement agreement

I waited a week and received no comments. There will be no further delay. I'm happy to conference with the judge on this if you like.

On Mon, Oct 28, 2019 at 11:17 AM Leonard Fink <lfink@springelfink.com> wrote:

Well, no. I drafted the agreement as I said I would, last weekend and had asked for any input on the agreement and made it clear that my client had not approved the language. So, if there are no further changes, I'll ask my client if they are okay with it.

**From:** David Sampson <davidsampsonlaw@gmail.com>  
**Sent:** Monday, October 28, 2019 11:15 AM  
**To:** Leonard Fink <lfink@springelfink.com>  
**Cc:** Christopher com> <turtzo@morrisullivanlaw.com>; David Clark <DClark@lipsonneilson.com>; Joseph Meloro <jmeloro@sgroandroger.com>; Julie Funai <JFunai@lipsonneilson.com>; Thomas G. Levine <tlevine@springelfink.com>; William Lemkul <Lemkul@morrisullivanlaw.com>  
**Subject:** Re: Russo - proposed settlement agreement

I patiently waited a week for any "approval" or proposed amendments. Having heard nothing from either of you it is time to move forward. There will be no further delay.

Thank you,

On Mon, Oct 28, 2019 at 10:32 AM Leonard Fink <lfink@springelfink.com> wrote:

Dave, thanks, but I did say that my client had not yet approved the agreement when I sent it out. Although I don't foresee an issue, I need to be clear on that. I also have the settlement check here, so once we get

10/31/2019

Gmail - RE: Russo - proposed settlement agreement

this done and done I can get it to you.

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

**Sent:** Monday, October 28, 2019 10:16 AM

**To:** Joseph Meloro <jmeloro@sgroandroger.com>

**Cc:** Leonard Fink <lfink@springelfink.com>; William Lemkul <Lemkul@morrissullivanlaw.com>; Christopher com> <turtzo@morrissullivanlaw.com>; Julie Funai <JFunai@lipsonneilson.com>; David Clark <DClark@lipsonneilson.com>; Thomas G. Levine <tlevine@springelfink.com>

**Subject:** Re: Russo - proposed settlement agreement

A week ago Mr. Fink provided a proposed settlement release as required by the Court. As you surely recall, Plaintiff insisted, and the Court agreed, that there should not be any undue delay in Defendants providing the release (final, not proposed) to Plaintiff. The same day Mr. Fink provided the proposed release I responded with proposed changes. Mr. Meloro also provided comments. Having not heard from anyone else in the last week regarding the proposed release nor the proposed changes or comments, I have finalized the release which includes my proposed changes and addresses Mr. Meloro's comments. I have attached the same hereto for your convenience. Be advised Dr. Russo will sign the same today and that, therefore, the checks need to be delivered to my office within 14 days as agreed.

Thank you all for your work on this matter.

On Thu, Oct 24, 2019 at 10:07 AM Joseph Meloro <jmeloro@sgroandroger.com> wrote:

Just a reminder:

To All:

1. Please change the first full sentence on the top of page 3 to read:

"BUSHBAKER and SCARCELLI shall not make any payment to PLAINTIFF, but both BUSHBAKER AND SCARCELLI agree to waive any rights that they may have from any other settled PARTY for fee and/or costs."

2. On page 3, 2. COVENANT NOT TO SUE AND DISMISSAL. The amount of \$140,000.00 seems to be incorrect.

3. As for Mr. Sampson's recommended change and page 3, section 3. "upon a proper and timely tender"

The term is vague. I prefer to remove or revise.

Please do not hesitate to contact my office with any questions or concerns. Thank you very much.



10/31/2019

Gmail - RE: Russo - proposed settlement agreement

Sincerely,

**Joseph S. Meloro**

SGRO | ROGER

ATTORNEYS AT LAW

720 S. 7th Street, 3rd Floor

Las Vegas, NV 89101

Telephone: (702) 384-9800

Facsimile: (702) 665-4120

jmeloro@sgroandroger.com

www.sgroandroger.com

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---

**From:** Joseph Meloro <jmeloro@sgroandroger.com>

**Date:** Monday, October 21, 2019 at 11:45 AM

**To:** David Sampson <davidsampsonlaw@gmail.com>, Leonard Fink <lfink@springelfink.com>

**Cc:** William Lemkul <Lemkul@morrisullivanlaw.com>, "Christopher com" <turtzo@morrisullivanlaw.com>, Julie Funai <JFunai@lipsonneilson.com>, David Clark <DClark@lipsonneilson.com>, "Thomas G. Levine" <tlevine@springelfink.com>

**Subject:** Re: Russo - proposed settlement agreement

To All:

1. Please change the first full sentence on the top of page 3 to read:

"BUSHBAKER and SCARCELLI shall not make any payment to PLAINTIFF, but both BUSHBAKER AND SCARCELLI agree to waive any rights that they may have from any other settled PARTY for fee and/or costs."

10/31/2019

Gmail - RE: Russo - proposed settlement agreement

2. On page 3, 2. COVENANT NOT TO SUE AND DISMISSAL. The amount of \$140,000.00 seems to be incorrect.

3. As for Mr. Sampson's recommended change and page 3, section 3. "upon a proper and timely tender"

The term is vague. I prefer to remove or revise.

Please do not hesitate to contact my office with any questions or concerns. Thank you very much.

Sincerely,

**Joseph S. Meloro**

**SGRO | ROGER**

ATTORNEYS AT LAW

720 S. 7th Street, 3rd Floor

Las Vegas, NV 89101

Telephone: (702) 384-9800

Facsimile: (702) 665-4120

jmeloro@sgroandroger.com

www.sgroandroger.com

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---

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

**Date:** Monday, October 21, 2019 at 10:20 AM

**To:** Leonard Fink <lfink@springelfink.com>

**Cc:** William Lemkul <Lemkul@morrissullivanlaw.com>, "Christopher com">

<turtzo@morrissullivanlaw.com>, Joseph Meloro <jmeloro@sgroandroger.com>, Julie Funai <JFunai@lipsonneilson.com>, David Clark <DClark@lipsonneilson.com>, "Thomas G. Levine" <tlevine@springelfink.com>

**Subject:** Re: Russo - proposed settlement agreement

10/31/2019

Gmail - RE: Russo - proposed settlement agreement

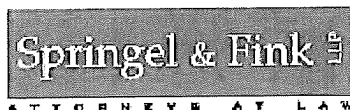
We need to make modifications regarding the remaining defaulted defendants. I have attached some proposed changes that may work but I welcome any feedback.

Thank you,

On Sun, Oct 20, 2019 at 8:31 PM Leonard Fink <lfink@springelfink.com> wrote:

Everyone, attached is my first shot at the settlement agreement. Please let me know any additions or subtractions.

[website](#) | [bio](#) | [vCard](#) | [map](#) | [email](#)



LEONARD T. FINK | PARTNER

Telephone: (702) 804-0706 Facsimile: (702) 804-0798  
10655 Park Run Drive, Suite 275 Las Vegas, NV 89144  
CALIFORNIA NEVADA ARIZONA

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--

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

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**EXHIBIT "2"**



10/31/2019

Gmail - Re: Russo - proposed settlement agreement



David Sampson &lt;davidsampsonlaw@gmail.com&gt;

**Re: Russo - proposed settlement agreement**

1 message

**Christopher A. Turtzo** <turtzo@morrisullivanlaw.com>

Mon, Oct 28, 2019 at 10:44 AM

To: Leonard Fink &lt;lfink@springelfink.com&gt;, David Sampson &lt;davidsampsonlaw@gmail.com&gt;, Joseph Meloro &lt;jmeloro@sgroandroger.com&gt;

Cc: Will Lemkul &lt;Lemkul@morrisullivanlaw.com&gt;, Julie Funai &lt;JFunai@lipsonneilson.com&gt;, David Clark &lt;DClark@lipsonneilson.com&gt;, "Thomas G. Levine" &lt;tlevine@springelfink.com&gt;

We are in the same position regarding approval of the release. I will follow up shortly on status.

-Chris.

Sent from my mobile phone

**Christopher A. Turtzo**

Partner

**MORRIS • SULLIVAN • LEMKUL****Nevada Office****Please note new address for NV Office**

3960 Howard Hughes Parkway, Suite 420  
Las Vegas, NV 89169  
Telephone: (702) 405-8100  
Telecopier: (702) 405-8101

**California Office**

9915 Mira Mesa Blvd, Suite 300  
San Diego, CA 92131  
Telephone: (858) 566-7600  
Telecopier: (858) 566-6602

[www.morrisullivanlaw.com](http://www.morrisullivanlaw.com)

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**From:** lfink@springelfink.com**Sent:** October 28, 2019 10:32 AM**To:** davidsampsonlaw@gmail.com; jmeloro@sgroandroger.com**Cc:** Lemkul@morrisullivanlaw.com; turtzo@morrisullivanlaw.com; JFunai@lipsonneilson.com;**DClark@lipsonneilson.com; tlevine@springelfink.com****Subject:** RE: Russo - proposed settlement agreement

# Exhibit 4

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,

)

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Plaintiff,

)

11

vs.

)

12

COX COMMUNICATIONS LAS VEGAS,

)

13

Defendant.

)

14

REPORTER'S TRANSCRIPT  
OF  
HEARING

15

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BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

18

DISTRICT COURT JUDGE

19

20

DATED THURSDAY, NOVEMBER 7, 2019

21

22

23

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

24

25

NOVEMBER 7, 2019

RUSSO V. COX COMMUNICATIONS

2

1 APPEARANCES:

2 FOR THE PLAINTIFF RUSSO:

3

DAVID SAMPSON, LLC

4

BY: DAVID F. SAMPSON, ESQ.

5

200 W. CHARLESTON BOULEVARD

6

LAS VEGAS, NV 89106

7

(702) 605-1099

8

(702) 888-209-4199

9

DAVIDS@INJURYHELPNOW.COM

10

11

12 FOR THE DEFENDANT IES RESIDENTIAL:

13

14

MORRIS SULLIVAN LEMKUL & PITEGOFF

15

BY: WILLIAM LEMKUL, ESQ.

16

BY: CHRISTOPHER A. TURTZO, ESQ.

17

3770 HOWARD HUGHES PARKWAY

18

SUITE 170

19

LAS VEGAS, NV 89169

20

(702) 405-8100

21

TURTZO@MORRISSULLIVANLAW.COM

22

23

24

25

Peggy Isom, CCR 541, RMR

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

Pursuant to NRS 239.053, illegal to copy without payment.



NOVEMBER 7, 2019

RUSSO V. COX COMMUNICATIONS

3

1 APPEARANCES CONTINUED:

2 FOR THE DEFENDANT CHRIS SCARCELLI:

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

4 BY: DAVID CLARK, ESQ.

5 BY: JULIE FUNAI, ESQ.

6 9900 COVINGTON CROSS DRIVE

7 SUITE 120

8 LAS VEGAS, NV 89144

9 (702) 382-1500

10 DCLARK@LIPSONNEILSON.COM

11

12

13

14 FOR THE DEFENDANT SUNRISE VILLAS IX HOA:

15

16 SPRINGEL & FINK, LLP

17

18 BY: LEONARD FINK, ESQ.

19

20 10655 PARK RUN DRIVE

21

22 SUITE 275

23

24 LAS VEGAS, NEVADA 89144

25

(702) 804-0706

(702) 804-0798 Fax

LFINK@SPRINGELFINK.COM

Peggy Isom, CCR 541, RMR

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

Pursuant to NRS 239.053, illegal to copy without payment.

NOVEMBER 7, 2019

RUSSO V. COX COMMUNICATIONS

4

1 APPEARANCES CONTINUED:

2 FOR KEVIN BUSHBAKER:

3

4 SGRO & ROGER

5 BY: JOSPEH MELORO, ESQ.

6 720 SOUTH SEVENTH STREET

7 SUITE #300

8 LAS VEGAS, NV 89101

9 (702) 384-9800

10 (702) 665-4120 Fax

11 JMELORO@SGROANDROGER.COM

12

13

14 \* \* \* \* \*

15

16

17

18

19

20

21

22

23

24

25

Peggy Isom, CCR 541, RMR

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

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

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.

2

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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 5

**From:** David Sampson <davidsampsonlaw@gmail.com>  
**Sent time:** 11/08/2019 08:26:15 AM  
**To:** Leonard Fink <lfink@springelfink.com>  
 Christopher A. Turtzo <turtzo@morrisullivanlaw.com>; Will Lemkul <Lemkul@morrisullivanlaw.com>; David Clark <dclark@lipsonneilson.com>; Joseph Meloro <jmeloro@sgroandroger.com>; Thomas G. Levine <tlevine@springelfink.com>; Ramie Morales <rmorales@mfrlegal.com>  
**Cc:**  
**Subject:** Re: Russo release  
**Attachments:** 11.8.19.docx STIPULATION BETWEEN SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AND SIMONE RUSSO RELATED TO CASE A (2) 11.8.19.docx

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I made a few minor changes to make the language consistent throughout the document. With these changes, and the changes to the stipulation I provided (also attached), we should be good to go.

Thank you,

On Fri, Nov 8, 2019 at 7:22 AM Leonard Fink <lfink@springelfink.com> wrote:

-257 ?Everyone, per the status conference yesterday and my later conversation with David, I am attaching my latest attempt at a settlement agreement. The changes only impact and affect Dr. Russo and Sunrise as it relates to the gardeners.

David, please note that I am supposed to talk to my adjuster in the next 30 minutes, so hopefully it will be good on our end.

Lenny

---

**From:** Leonard Fink <lfink@springelfink.com>  
**Date:** Thursday, November 7, 2019 at 9:35 AM  
**To:** David Sampson <davidsampsonlaw@gmail.com>, "Christopher com" <turtzo@morrisullivanlaw.com>, "William Lemkul" <Lemkul@morrisullivanlaw.com>, David Clark <dclark@lipsonneilson.com>, Joseph Meloro <jmeloro@sgroandroger.com>  
**Cc:** "Thomas G. Levine" <tlevine@springelfink.com>, Ramie Morales <rmorales@mfrlegal.com>  
**Subject:** Re: Russo release

In an effort to help us this morning, I am attaching what was the version of the settlement agreement that David had suggested changes on. I have removed a couple of my suggested changes and have made a couple of new ones. The intent of the agreement is to ensure the following for all parties:

1. Plaintiff retains his rights to pursue Suslak and Desman, including whatever contractual rights it may have against anyone, which would include Sunrise, Sunrise's insurers or any other settling defendant.
2. If Suslak and Desman are Sunrise's employees, which there is no evidence to support, then the release covers them too as Sunrise's employee. This is no different than if Plaintiff tried to sue one of the prior board members.
3. All of the defendants release their claims against all other defendants and against Plaintiff, and vice versa, including any outstanding cross-claims, future cross-claims and tenders of defense
4. This does not include any of Bushbaker's claims that it should be covered by Sunrise's insurance policy such that he can at least attempt to pursue his claims for defense fees and costs, whether fruitful or not.
5. Plaintiff agrees to defend and indemnify the defendants, their carriers, etc. for all liens

If there is a better way to make this happen than what is written, I'm open to it.

Lenny

---

**From:** David Sampson <[davidsampsonlaw@gmail.com](mailto:davidsampsonlaw@gmail.com)>

**Date:** Wednesday, November 6, 2019 at 9:22 AM

**To:** "Christopher com>" <[turtzo@morrisullivanlaw.com](mailto:turtzo@morrisullivanlaw.com)>, 'William Lemkul' <[Lemkul@morrisullivanlaw.com](mailto:Lemkul@morrisullivanlaw.com)>, Leonard Fink <[lfink@springelfink.com](mailto:lfink@springelfink.com)>, David Clark <[dclark@lipsonneilson.com](mailto:dclark@lipsonneilson.com)>, Joseph Meloro <[jmeloro@sgroandroger.com](mailto:jmeloro@sgroandroger.com)>

**Subject:** Russo release

As I have not heard back from SUNRISE regarding any release to which SUNRISE would be agreeable in this matter, and as I have yet to receive confirmation from counsel for SCARCELLI regarding any acceptable release, I propose the attached release, which does exactly what was agreed in 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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Thank you.

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--  
David Sampson, Esq.  
Certified Personal Injury Specialist (Nevada Justice Association, State Bar of Nevada)  
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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.



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 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.

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*

**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

Dated: \_\_\_\_\_

**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: \_\_\_\_\_

**SGRO & ROGER**

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

Joseph Meloro, Esq.  
*Attorneys for Defendant, Kevin Bushbaker*

Dated: \_\_\_\_\_

**LIPSON NEILSON**

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

Julie Funai, Esq.

*Attorneys for Defendant, Chris Scarcelli*

# Exhibit 6

NOVEMBER 8, 2019

RUSSO V. COX COMMUNICATIONS

1

1 CASE NO. A-17-753606-C

2 DOCKET U

3 DEPT. XVI

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5

6

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,  
INC.,

)

)

13

Defendant.

)

)

14

)

)

15

REPORTER'S TRANSCRIPT

16

OF  
HEARING

17

(TELEPHONIC CONFERENCE)

18

19

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20

DISTRICT COURT JUDGE

21

22

DATED FRIDAY, NOVEMBER 8, 2019

23

24

25

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

Peggy Isom, CCR 541, RMR

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

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RUSSO V. COX COMMUNICATIONS

2

1 APPEARANCES:

2 FOR THE PLAINTIFF RUSSO:

3

DAVID SAMPSON, LLC

4

BY: DAVID F. SAMPSON, ESQ.

5

200 W. CHARLESTON BOULEVARD

6

LAS VEGAS, NV 89106

7

(702) 605-1099

8

(702) 888-209-4199

9

DAVIDS@INJURYHELPNOW.COM

10

11

12 FOR THE DEFENDANT IES RESIDENTIAL:

13

14

MORRIS SULLIVAN LEMKUL & PITEGOFF

15

BY: WILLIAM LEMKUL, ESQ.

16

3770 HOWARD HUGHES PARKWAY

17

SUITE 170

18

LAS VEGAS, NV 89169

19

(702) 405-8100

20

TURTZO@MORRISULLIVANLAW.COM

21

22

23

24

25

Peggy Isom, CCR 541, RMR

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

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RUSSO V. COX COMMUNICATIONS

3

1 APPEARANCES CONTINUED:

2

3 FOR THE DEFENDANT SUNRISE VILLAS IX HOA:

4

SPRINGEL & FINK, LLP

5

BY: LEONARD FINK, ESQ.

6

10655 PARK RUN DRIVE

7

SUITE 275

8

LAS VEGAS, NEVADA 89144

9

(702) 804-0706

10

(702) 804-0798 Fax

11

LFINK@SPRINGELFINK.COM

12

13

14 FOR KEVIN BUSHBAKER:

15

16

SGRO & ROGER

17

BY: JOSPEH MELORO, ESQ.

18

720 SOUTH SEVENTH STREET

19

SUITE #300

20

LAS VEGAS, NV 89101

21

(702) 384-9800

22

(702) 665-4120 Fax

23

JMELORO@SGROANDROGER.COM

24

25

\* \* \* \* \*

Peggy Isom, CCR 541, RMR

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

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NOVEMBER 8, 2019

RUSSO V. COX COMMUNICATIONS

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1 LAS VEGAS, NEVADA; FRIDAY, NOVEMBER 8, 2019

2 9:35 A.M.

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

4 \* \* \* \* \*

5  
6 THE COURT: Good morning to everyone.

7 IN UNISON: Good morning.

8 THE COURT: All. Right. And let's go ahead  
9 and place our appearances for the record.

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

11 MR. FINK: Leonard Fink, Sunrise Villas IX  
12 HOA.

13 MR. LEMKUL: Will Lemkul, your Honor, for Cox  
14 and IES.

15 THE COURT: All right.

16 MR. MELORO: Joseph Meloro for Kevin  
17 Bushbaker.

18 THE COURT: And we have Mr. Meloro in the  
19 courtroom. And so this is a follow up on yesterday  
20 regarding some of the material terms of the settlement.  
21 Have we come to some sort of agreement?

22 MR. FINK: Your Honor, Leonard Fink for  
23 Sunrise Villas IX. We are really, really close. I  
24 mean, Dave and I exchanged -- Mr. Sampson and I  
25 exchanged language that I'm fine with. I've sent it

Peggy Isom, CCR 541, RMR

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

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1 off to my carrier who is having their coverage counsel  
2 look at it. Unfortunately, even though I told them we  
3 had a 9:30 status conference, I still don't have an  
4 answer on it. But I think that we're pretty much  
5 there, but I can't say for sure at this exact minute  
6 because I don't know what they're all going to say.  
7 But I think -- I think we're probably fine.

8 THE COURT: Mr. Sampson, sir.

9 MS. SAMPSON: Well, I don't know. I mean, I  
10 hope -- I hope -- I hope we're fine. This is the thing  
11 that I can't just -- I can't get out of my head is  
12 yesterday I read into the record a release that I had  
13 proposed in the alternative that essentially said, you  
14 know, it names all the parties and then says we agree  
15 to release each other pursuant to the terms set forth  
16 on the record on October 16 and October 18 of 2019.

17 And so, I guess, the only thing I don't want  
18 any further delay. I don't want to get a call, you  
19 know, in an hour from Mr. Fink going, oh golly gosh,  
20 you know what, some carrier has got some issue, and now  
21 we have no way to flush it out.

22 So perhaps the Court could say, you know, if  
23 Mr. Fink and his client agree to what Mr. Sampson  
24 proposed this morning, and no one else has any  
25 objection on this Sunrise employee Duslak Sesman thing

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RUSSO V. COX COMMUNICATIONS

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1 then we'll go ahead and sign what Mr. Sampson proposed  
2 this morning. And that's going to be done.

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

9 I still for the life of me don't understand  
10 why we can't just do that. Because the only reason  
11 anybody would want to object to that is if they plan on  
12 just wanting to delay things for some reason, or they  
13 want to get some right that wasn't placed on the  
14 record. Neither one of which would be an appropriate  
15 reason to not sign that release.

16 So that would be my preference so one way or  
17 another we've got one of two releases that will be  
18 signed, and my client is going to get his money here  
19 pretty quick.

20 THE COURT: Okay. You want -- you want to  
21 respond to that, Mr. Fink?

22 MR. FINK: Judge, I have no idea even what to  
23 say. I mean, we've all been down this road before. I  
24 can't agree to anything like that until I get the  
25 approval from the people that are paying the money that

1 have the actual stake in this.

2           You know, and there's a lot of moving parts.  
3 This is not a normal -- this isn't a normal  
4 by-the-numbers settlement because of the carve out.  
5 We're working through it. Again, I was -- I've been  
6 worked on this since early this morning. I was  
7 really -- thought I would get a definitive answer by  
8 now. I don't have it.

9           You know, it may very well be that the answer  
10 is, you know what, let's go with Mr. Sampson's proposal  
11 with -- we just use the record. And then we use the  
12 record and supplement it, I think, for the -- to make  
13 sure we've got the liens taken care of. Which I think  
14 we're the only other real major issue. But, you know,  
15 I can't --

16           And, Judge, you've been through this before.  
17 You've been through this as a settlement conference  
18 judge. You've seen it through the parties. I just --  
19 it's -- I can appreciate Mr. Sampson's position, but it  
20 just can't work that way.

21           THE COURT: This is -- and --

22           MS. SAMPSON: Why can't --

23           THE COURT: This is one -- I think this is  
24 important to really point out. And from time to time  
25 from a judicial perspective, I have to make sure that

1 the issue in front of me is clearly ripe for  
2 adjudication.

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

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

18           In contrast, and this is important to point  
19 out, if they're not done, then I have to make some  
20 important decisions.

21           As a trial judge, I don't give advisory  
22 decisions.

23           But, Mr. Sampson, you are correct. I will  
24 have to make some decisions. But here's the problem  
25 with making decisions. Decisions don't always end up

1 being efficient in the long term. Because what  
2 potentially could trigger that would be more delay,  
3 potential posttrial motions, maybe a Rule 54  
4 certification, writ to the Court of Appeals and/or  
5 Nevada Supreme Court. And that doesn't really help  
6 anyone at this point.

7           And so I don't mind saying this. I wanted to  
8 delay a little bit or kick the can down the road so  
9 that doesn't occur. Because I feel it's prudent to let  
10 you guys work it out. That's probably the best way I  
11 can say it. Because as a trial judge sometimes I have  
12 to help everyone along. And sometimes inaction helps  
13 facilitate the process. Especially under the facts of  
14 this case. Because understand this: I'm not dealing  
15 with motions in limine. I'm not dealing with pretrial  
16 dispositive motions. I'm not dealing with any of those  
17 things where time is necessarily of the essence in that  
18 we're going to trial.

19           I do realize there's a significant time  
20 component. I want to make sure Mr. Sampson understands  
21 this, I've been in your situation before many times.  
22 And I understand clients and their demands. And they  
23 don't see things the way lawyers see them. I get that.  
24 But if we can get this matter done sometime this  
25 morning, I think everyone is in a better position. I

1 just do.

2 And so I'm not going to make any decisions  
3 other than I'm going to monitor this matter. And what  
4 I mean by that is this: Let me know what happens  
5 either way. And we can do it one of two ways.

6 I would want a joint letter. Judge, we're  
7 done. Everything is agreed. Or, Judge, we're not  
8 done. And there's a problem.

9 And then I have to decide what to do. Does  
10 everybody understand that?

11 MS. SAMPSON: I understand that. I would add  
12 that it does not necessarily have to be a joint letter  
13 because apparently there is issues working together.  
14 That's why we're here.

15 THE COURT: Well --

16 MS. SAMPSON: And keep in mind I understand  
17 Mr. Fink says there's a lot of moving parts, and that's  
18 why I waited until right now at the end of three weeks  
19 later before I -- before I'm where I'm at. I went the  
20 whole first week very patiently waiting to see what  
21 could find out, and I heard zero from anybody except  
22 Mr. Meloro. Period. From nobody at all except him.

23 THE COURT: And I understand this --

24 MS. SAMPSON: And then I wait the second  
25 week --



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RUSSO V. COX COMMUNICATIONS

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1 THE COURT: But, Mr. Sampson --

2 MS. SAMPSON: Then --

3 THE COURT: -- number one, I understand your  
4 frustration. I get that. I truly do.

5 But understand this. I don't know if it would  
6 be necessarily appropriate to say that you and Mr. Fink  
7 aren't working together because apparently both you and  
8 Mr. Fink have agreed in principle on the specific  
9 language. All's he's doing right now is he's seeking  
10 approval from the insurance carrier I would anticipate  
11 and they're having counsel look it over.

12 And --

13 MS. SAMPSON: Right.

14 THE COURT: It doesn't happen --

15 MS. SAMPSON: But --

16 THE COURT: -- necessarily all the time in  
17 tort cases. But when it comes to release language --

18 MR. SAMPSON: Three weeks?

19 THE COURT: No, no, no, no. I mean, let's be  
20 fair. It's my understanding that the stipulation or  
21 proposed stipulation was agreed to just yesterday. And  
22 then Mr. Fink met with -- apparently sent  
23 correspondence back east early this morning to seek  
24 some sort of approval.

25 And so, I mean, there's a lot of moving parts.

Peggy Isom, CCR 541, RMR

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

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1 And it is what it is. But the ultimate agreement in  
2 principle occurred yesterday. That's my understanding.

3 And so --

4 MR. SAMPSON: And that's -- the problem I  
5 have, Judge, is they always -- no, not "they", Mr. Fink  
6 at this point. I get discussion, and we start working  
7 stuff out. Well, we have a hearing tomorrow, and  
8 that's what happened on Wednesday when we had the  
9 hearing set for yesterday. It's what happened this  
10 morning when we had a hearing set for this morning.

11 So my concern is if we leave it -- I don't  
12 understand why there would be an issue with, Look, if  
13 you reach an agreement -- obviously, if we reach an  
14 agreement, halleluiah, we get the thing done. But I  
15 don't think there would be a problem with the judge  
16 saying in the event -- with your Honor, in the event  
17 you can't reach a settlement agreement -- we're three  
18 weeks out now. You can't reach an agreement, so here's  
19 what we're going to do.

20 THE COURT: I mean, tell you --

21 MR. SAMPSON: It would be from --

22 THE COURT: I can tell you what I'm going to  
23 do. My court reporter is here. If for some reason  
24 there can't be -- there's not -- you can't reach an  
25 agreement, I'll pull the points and authorities, and

1 I'll look at the transcript from that hearing. Then  
2 I'll make a determination based upon the record.

3 And the reason why I would do that, I would  
4 think all the Nevada case law would specifically  
5 require me to look at the record and specifically the  
6 terms and conditions that were placed on the record.

7 And understand this, I think the case law is  
8 pretty clear on that. And, hypothetically, Mr. Sampson  
9 you might be right. But if I'm going to go that route,  
10 I feel compelled. I would at the very least, and I've  
11 done this in every case that involves motions to  
12 enforce settlement agreements that were placed on  
13 the -- the material terms were placed on the record,  
14 I've done that in every case. I wanted to see exactly  
15 just to make sure, not go off of rote memory. Case in  
16 point, you are kind of fortunate you're in a court  
17 reporting department where we have a court reporter  
18 that's here today.

19 And it might take her a little while to get  
20 the exact transcript together, but I can do that. In  
21 contrast, I remember I was doing a settlement  
22 conference for another judge -- no, in one of my own  
23 cases and another judge actually did the settlement  
24 conference. They were a JAVS department and not a  
25 court reporting department. And it took me about close

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1 to a month or more to get a copy of the transcript.  
2 And that's just because the way that -- those -- the  
3 recording departments are set up.

4           They don't do the transcripts. They send them  
5 out. And so I have an in-house certified court  
6 reporter that also does realtime court reporting and  
7 that can give you realtime during trial. So that's not  
8 a real big issue for us.

9           But I just want to make sure everybody  
10 understands that no matter what I do, I do have to read  
11 the transcript.

12           MR. SAMPSON: Although, your Honor, and I  
13 appreciate that. However, if the release is as I  
14 proposed it, it's going to say we release each other  
15 pursuant to the terms that were set forth in the  
16 record. So that point it doesn't matter what the  
17 transcript says. Whatever it says, is what we've  
18 agreed to in the release. No more, no less.

19           So I appreciate if we're going to put in  
20 details and go beyond just saying we release each other  
21 as agreed to in the transcript, then I want to go  
22 through it. But I think we can say that is a very  
23 practical way of handling it and saying you guys are  
24 releasing each other as agreed on the record. And can  
25 we just please --

Peggy Isom, CCR 541, RMR

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

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Docket 83115 Document 2022-18292

1 THE COURT: You know what, Mr. Sampson.

2 MS. SAMPSON: -- do the agreement that was  
3 made on the record.

4 THE COURT: All I can say is this, and I  
5 understand and I respect your proposal. But I've never  
6 seen a settlement agreement executed and signed by the  
7 parties in that regard. And there's a reason for it.  
8 There might be what would be considered material terms  
9 that would be the basis for enforcement of the  
10 settlement, but there's also a lot of collateral terms  
11 to the settlement agreement that typically goes into  
12 settlements; right?

13 And so what you're asking me to do is, under  
14 those circumstances, would be to somehow not consider  
15 what lawyers would normally put in settlement  
16 agreements. And so all I'm doing is this, and I think  
17 this is the best way to say it, if this matter doesn't  
18 settle, I'll make some tough decisions. I feel  
19 compelled I have to review the transcript.

20 MS. SAMPSON: Okay.

21 THE COURT: I don't think any trial judge  
22 would make a determination that there's a settlement  
23 without reading the transcript and making sure I  
24 clearly understand what the material terms are.

25 And I think that's just important. Because I

1 think -- I mean, my recollection, and I wish I had  
2 100 percent recollection of every fact and statement of  
3 lawyers in cases, but I don't. I do remember some of  
4 the key terms. But do I have absolute recollection?  
5 No, I don't. And I don't think any judge would have  
6 absolute recollection of everything placed upon the  
7 record vis-à-vis a settlement three-plus weeks later.  
8 It just doesn't happen that way.

9 Mr. Meloro.

10 MR. MELORO: Your Honor, Joseph Meloro for  
11 Mr. Bushbaker. I would think that the material terms  
12 were put on the record, but it's still -- I am going to  
13 be comfortable with the formal settlement agreement  
14 that do include the terms that generally are included  
15 that lawyers add as is like you said. And that just  
16 going off the record could be vague and ambiguous.  
17 There was all sorts of other language during the  
18 hearing, and I just don't see that that is the best  
19 solution to this. All we are is waiting for Mr. Fink  
20 to get some response from his insured, and we'll know  
21 where we're going to go from there.

22 But I just think that making an agreement to  
23 of -- you know, go off the record. And which I haven't  
24 reviewed the record either, your Honor. That, you  
25 know, I think that your decision to maybe just postpone

1 this until we find out what Mr. Fink's insured has to  
2 say would probably be the best solution at this point.

3 THE COURT: Anyone else want to --

4 MS. SAMPSON: The only other -- the only --

5 MR. FINK: Your Honor.

6 MR. SAMPSON: -- thing I would request is  
7 that -- is that you mentioned a joint letter. Can I  
8 just have -- just let me send a letter. If we don't  
9 reach a settlement agreement, I'll advise the Court.  
10 We do -- we don't have an agreement. I don't think I  
11 should have to shuffle back and forth with the other  
12 attorneys to get a joint letter out to your Honor just  
13 to tell you we didn't reach an agreement. Could I  
14 please at least do that?

15 THE COURT: There is a method to my madness.  
16 And although in a general sense under the facts of this  
17 case, I don't think that would be a big issue. But  
18 understand this. And I think this is important to  
19 point out. From a custom and practice perspective, I  
20 don't read letters at all that come from lawyers unless  
21 they're joint letters by all the parties and their  
22 lawyers.

23 And the reason why for it is this: I have to  
24 be concerned about ex parte communications; right? And  
25 if we have an agreement that, Look, Judge, we're going

1 to send a joint letter, I mean, that's fine. Now, if  
2 someone said, Look, Judge, we'll waive that, and all  
3 you have to do is cc us on the letter, that's another  
4 thing.

5 But once again, I have no control over what's  
6 coming to me; right? And so there's a reason why I do  
7 everything. And once again, I think I said this  
8 yesterday in open court. When it comes to letters from  
9 lawyers, I don't read them. They take them and left  
10 side file them. Because I am concerned of ex parte  
11 communications.

12 You know, if it's a joint letter from  
13 everybody, and my law clerk will check that, say, yes,  
14 Judge, this is from the plaintiff. This is from the  
15 defendants signed off, and we have third-party  
16 defendants maybe that have signed off. Okay.

17 And typically all those letters say is, Judge,  
18 we have a full settlement and resolution of the case;  
19 right? But that's my concern.

20 And I just want you to understand,  
21 Mr. Sampson, there's a reason why I proceed in a  
22 certain way, you know. It's just not arbitrary.  
23 That's probably the best way I can say it.

24 MR. FINK: Your Honor, Leonard Fink for  
25 Sunrise. In this particular case, and I would be -- I



1 would be fine from my client that if we, whatever our  
2 resolution is, that if the letter from Mr. Sampson to  
3 the Court cc'ing all counsel, I have no qualms that  
4 he's not going to -- I'm sure he's not going to  
5 misrepresent anything.

6 THE COURT: Right.

7 MR. FINK: And I can -- I understand, you  
8 know, that getting everybody to sign things could be a  
9 little bit more onerous than this would need to be  
10 under these circumstances. So for Sunrise, I'll be  
11 fine doing that.

12 MR. LEMKUL: I'm fine with that too, your  
13 Honor. This is Will Lemkul.

14 THE COURT: Okay. Mr. Lemkul is fine with it.  
15 Mr. Meloro, you okay with it?

16 MR. MELORO: I have no objection. I don't  
17 think there will be any misrepresentations.

18 THE COURT: I understand.

19 MR. MELORO: Either we settle or we don't,  
20 your Honor.

21 THE COURT: And you are 100 percent correct,  
22 sir. All the letter is going to say essentially, we  
23 got a deal, Judge, or we don't.

24 You got that, Mr --

25 MR. FINK: Your Honor, that's fine.

1 THE COURT: Is that fine, Mr. Sampson?

2 MS. SAMPSON: That is fine.

3 (Reporter clarification)

4 THE COURT: I don't know. I'm not sure.

5 MR. SAMPSON: I think it's the party that  
6 doesn't -- that doesn't reach the agreement. We've  
7 got -- we've got -- what we've got -- we've got three  
8 parties, three defendants and a plaintiff who all said  
9 this is fine. We've got one hold out.

10 MR. MELORO: For the record, your Honor, I  
11 mean the settlement agreement --

12 (Unreportable cross-talk)

13 THE COURT: One -- okay. And, Mr. Sampson,  
14 Mr. Meloro wants to add something.

15 MR. MELORO: I am in agreement to the last  
16 proposal that was given. And the dispute between  
17 Sunrise and the plaintiff, that doesn't regard myself.

18 THE COURT: Right.

19 MR. FINK: Your Honor, Leonard Fink. Just  
20 because we're on the record, I feel the need that I've  
21 got to defend myself here. And I have been doing  
22 everything I can to get this case settled and done.  
23 Including like I said yesterday, I jumped on and did  
24 the proposed agreement within, I think we put on the  
25 record Friday afternoon and by Monday morning everybody

1 had it. I was waiting as was Mr. Sampson for input.  
2 It happens that way. But I don't appreciate and I  
3 don't want the record to show in any way that I've  
4 delayed or done anything other than trying to get this  
5 case to the finish line.

6 So it's an important issue. And, you know, I  
7 mean, I suppose we can broach the subject of who's  
8 going to pay for the transcript if we need to do that.  
9 Or as of right now, there is no -- we don't know that  
10 we need to do that.

11 THE COURT: Okay. All right.

12 MS. SAMPSON: Well, I'd like it resolved  
13 before we -- I mean, I don't want to have to have  
14 another conference and another conference to talk about  
15 okay who's going to pay for the transcript next.

16 MR. FINK: Well --

17 MS. SAMPSON: I mean --

18 (Unreportable cross-talk)

19 THE COURT: Stop. Wait, wait, wait. You have  
20 to be one at a time. Go ahead.

21 MR. SAMPSON: Sure. And as I was saying, you  
22 know, I find it hard to believe that qualified  
23 upstanding member of the bar doing everything they can  
24 to work this out couldn't call me back for two straight  
25 weeks at all to even tell me nothing if anything is

1 going on.

2           So, I mean, there's been a delay here. Other  
3 than Mr. Meloro, I heard nothing from anybody for the  
4 first nine days of this. And then I spoke for a day or  
5 two with Mr. Fink on it. Got some -- got some word  
6 from Cox, we worked it out.

7           Spoke with Mr. Meloro. We worked it out.  
8 Spoke with Mr. Clark, we worked it out. And then I  
9 went a whole other week with radio silence from  
10 Mr. Fink. So with what's going on, again, and I  
11 proposed another possible solution that just says  
12 whatever the transcript says is what we agreed to.

13           So in light of that, I don't see why my client  
14 should be penalized.

15           THE COURT: Well, nobody --

16           MS. SAMPSON: If it's not being worked out.  
17 If anybody has done everything they can, believe me  
18 it's me. In fact, I've held back on a few things. I  
19 probably should have gotten a motion to compel in the  
20 middle of that first week. But I was giving everyone  
21 the benefit of the doubt. But oh, no, they're not  
22 going to -- certainly they won't delay. I mentioned  
23 when we reached it on the record, we're not going to  
24 drag this out two weeks. Oh, no, we won't. Don't  
25 worry about it.

1           So I gave everyone the benefit of the doubt.  
2 And I've been extremely patient. And now, apparently,  
3 if Sunrise can't agree to the final iteration that  
4 everyone else is on board with, somehow my client is  
5 going to pay the price for that. I don't think that's  
6 fair at all.

7           THE COURT: Well, I can tell you this. And  
8 this is one decision I will make. Your recommendation,  
9 and that's what it would be, that I enter an order that  
10 would say, Look, case settled based upon the terms and  
11 conditions as set forth in this record, and leaving it  
12 at that, I think potentially that's problematic.  
13 Because I don't think the case law on any level would  
14 stand for the proposition that it would be appropriate  
15 for the trial judge to do that.

16           What the -- what I would have to do is this:  
17 I'd have to make -- review the transcript and make a  
18 determination as to whether or not there was an  
19 agreement as to the material terms and conditions of  
20 the settlement. And that's how it's done in every  
21 case.

22           And one thing I won't do, and I feel very  
23 strongly about this, I've been on the bench now for  
24 almost 14 years, and that's the way I do things. It  
25 just is. And any lawyer that's been in front of me

1 during that time period knows that I tend to go by the  
2 book. I cross my I's and I dot my -- I cross my T's  
3 and I dot my I's, and that's how I do it. And then I  
4 can live with the results as to what the Nevada Supreme  
5 Court or Court of Appeals does under those  
6 circumstances.

7 But it's -- it would -- I think it would be  
8 even -- I mean, I feel potentially this way: If I  
9 entered an order like that, the material terms, without  
10 articulating what the material terms of the settlement  
11 would be, that order wouldn't stand.

12 In contrast, I could review it and make a  
13 judgment that these are the material terms of the  
14 settlement. And say we have an enforceable settlement  
15 here, then that could stand. And I think that's what  
16 the case law mandates.

17 So I'm not going to be an outlier, and I never  
18 have been. And I'm just going to do what I think is  
19 right under the facts and circumstances of any case.

20 And last, but not least, I think this is  
21 important to point out too, right now all we're doing  
22 is waiting for communications from the carrier. And so  
23 all these discussions about this and that, it's not  
24 really accomplishing anything, right?

25 MR. MELORO: Your Honor, Joseph Meloro for

1 Mr. Bushbaker.

2 MS. SAMPSON: Oh, no, I disagree.

3 MR. MELORO: I'm sorry. I'm --

4 (Unreportable cross-talk)

5 THE COURT: Wait, wait, wait.

6 (Reporter clarification)

7 THE COURT: Wait, wait. Now, Mr. Meloro, I'll  
8 let you go. Just one comment.

9 MR. MELORO: Thank you. I also would like to  
10 say I feel my client's being penalized. My client is  
11 just an individual in this matter. I'm not going to  
12 get into the, you know, our defenses. We believe we're  
13 not even a true party to this case. But my client is  
14 having to pay for all these hearings. And he is being  
15 penalized as well.

16 So I would like for the sake of finality to  
17 come to some sort of decision because, you know, we got  
18 to realize, these aren't all corporations in this  
19 matter.

20 THE COURT: I understand. And here's my  
21 point. We're having all these discussions. We already  
22 have a record as to what happened. We don't need to  
23 argue it over and over and over again. We don't.

24 Because, ultimately, whoever has the last  
25 word, or whoever argues the longest, that's not going

1 to -- that's not going to control my ultimate decision.  
2 I'm going to do what a trial judge should do. I'm  
3 going to look at the record. I'm going to review the  
4 transcript. And then I will take a close look at the  
5 case law that guides me as to making a determination as  
6 it relates to whether or not the material terms of the  
7 settlement were placed on the record. And that's it.  
8 Very clinical. Nothing more, nothing less.

9           Anyone else want to comment? And then we'll  
10 go.

11           MR. FINK: Last thing from me, Judge. And I  
12 appreciate everything you said, but I'm -- again,  
13 because we're on the record, I'm getting very tired of  
14 having to defend myself and to my actions when I'm  
15 being told constantly that it's been inaction, which  
16 hasn't been true. Other than when I, like I said  
17 yesterday, I got sick for four days and wasn't doing  
18 anything. So not just for Mr. Sampson, but for  
19 anybody.

20           So, you know, it's a mischaracterization of  
21 the efforts that have gone in to get this done.  
22 It's -- again, I'm getting tired of repeating myself.  
23 Hopefully, I don't have to do that again.

24           THE COURT: All right. So, I guess --

25           MR. FINK: I will --



1           THE COURT: Go ahead. I don't want to cut  
2 anybody off.

3           MR. FINK: No, no. I'm sorry. I will as soon  
4 as we're off the phone, I will, again, follow up with  
5 my people. I've been -- as I've been doing all  
6 morning, and I'll continue to do that throughout the  
7 day.

8           THE COURT: Okay. Mr. Lemkul, anything you  
9 want to add, sir?

10          MR. LEMKUL: No, your Honor. Other than to  
11 say I do have my client's settlement draft. I have a  
12 check. So once we get past the impasse, I can have  
13 that over to Mr. Sampson's office within minutes.

14          The other thing, I don't know if it helps  
15 anybody but just to maybe to calm Mr. Sampson down a  
16 little bit. I have had numerous conversation with  
17 Lenny about these issues. I can tell you at least from  
18 my standpoint that he's responded to me about a bunch  
19 of issues over the course of this entire time with the  
20 exception of when he was sick.

21          So there have been efforts. And I know it's  
22 hard looking outside in, but there's been a lot of  
23 effort have gone into it. In fact, I personally got on  
24 the phone with a manager at my insurance company to  
25 make sure I would have this check for David

1 commensurate with the time period we gave the Court.  
2 So I know it's frustrating. The whole thing is tough.  
3 I think by Monday at 5:00 this will be done.

4 THE COURT: Mr. Meloro.

5 MR. MELORO: I would like to add to give  
6 Mr. Fink credit, he did have a release prepared that  
7 Sunday after the Friday when we concluded the matter.  
8 So that I think that was a gallant effort itself that  
9 shouldn't be forgotten.

10 THE COURT: And, Mr. Sampson, you get the last  
11 word, sir.

12 MS. SAMPSON: Thank you, Judge. I'm not  
13 casting aspersions. I don't know what's going on, on  
14 the other side. I've been talking about the facts  
15 every time I brought this up.

16 The fact is I was given a document either  
17 Sunday night or Monday morning after we resolved this  
18 that Mr. Fink said here's a thing I've written, but I  
19 don't have any authority from my client as to whether  
20 this will work or not.

21 I made my changes. I wrote back immediately.  
22 Mr. Meloro got in response with me immediately. And I  
23 heard zero from anyone else for a solid week.

24 And it wasn't until the following Monday that  
25 I heard anything. Now I'm only talking about the facts

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1 of what went on. And someone takes that as an attack,  
2 well, that's the reality of what happened. I don't  
3 know what went on.

4 For all I know, Mr. Fink was every single hour  
5 of every day that week on the phone with his client.  
6 In which case, I guess, his client would have some  
7 explaining to do. But all I know is I got zero  
8 response until the following Monday when I said since  
9 no one is responding, except Mr. Meloro, and we've got  
10 it worked out, let's go with this.

11 And then within 10 or 15 minutes, I hear from  
12 Sunrise, from Mr. Fink and from Mr. Turtzo on behalf of  
13 Cox. Work it out with Cox over the course -- over the  
14 course of I think the next 24 or 48 hours. I think  
15 Mr. Fink a time or two over the next couple of days.  
16 Then I hear nothing at all until we are literally on  
17 the eve of yesterday's hearing. Then I finally hear  
18 again, and we talk.

19 Now, it sounds like there's zealous things  
20 going on. But that's what's happened.

21 And, you know, Mr. Fink has done everything  
22 possible. Maybe he has. All I indicated was this is a  
23 reality of what I've seen, and I question whether  
24 that's the case based on what I've seen here. Because  
25 I'd like to think if someone -- if an attorney was

Peggy Isom, CCR 541, RMR

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

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1 truly doing everything they could, I would have heard  
2 something by perhaps Wednesday of week one and not over  
3 a week later. So that's where we're at on this.

4 I appreciate that Mr. Fink take whatever  
5 efforts he can this morning to just get the final word  
6 on this thing that is apparently, you know, all the  
7 other defendants agree to, my client agrees to, and it  
8 sounds like Mr. Fink even agrees to.

9 So see if we can get the client on board,  
10 Sunrise on board. If so, great. If not, can I please  
11 know, perhaps, I don't know, by noon today or by 2:00  
12 o'clock today so that I can send a letter to the Court  
13 sometime later today. Or if I hear later in the day, I  
14 guess, on Tuesday because Monday is a holiday, that  
15 says: "We got a deal. We're finalizing it. Or we  
16 don't, Judge. Please proceed with rectifying this for  
17 us."

18 THE COURT: All right. Anything else?

19 MS. SAMPSON: No, Judge. Thank you.

20 MR. FINK: No, not from Sunrise, Judge.

21 THE COURT: Okay. Good luck, Mr. Fink. Get  
22 it done.

23 MR. FINK: Thank you.

24 MS. SAMPSON: All right.

25 THE COURT: Everyone, enjoy your day.

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1 MR. FINK: Thank you.

2 MR. MELORO: Thank you. Thank you, Judge.

3 MR. LEMKUL: Thank you.

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7

8 (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  
TELEPHONIC 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

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# Exhibit 7

**SETTLEMENT AGREEMENT AND RELEASE**

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

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





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

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

### RECITALS

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

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

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

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

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

#### 1. SETTLEMENT PAYMENT TERMS AND CONDITIONS.

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



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

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

2. COVENANT NOT TO SUE AND DISMISSAL.

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

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

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

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



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

4. RELEASE.

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

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

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

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

#### 5. HANDLING OF SETTLEMENT FUNDS.

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

#### 6. REPRESENTATION BY COUNSEL.

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



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

7. DISPUTED CLAIMS.

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

8. FURTHER ASSURANCES.

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

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

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

10. BENEFIT AND BURDEN.

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

11. WAIVER AND AMENDMENT.

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

12. CAPTIONS AND INTERPRETATIONS.

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

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

13. AUTHORITY TO EXECUTE.

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

14. INTEGRATION.

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

15. SEVERANCE.

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

16. VOLUNTARY AGREEMENT.

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

17. GOVERNING LAW.

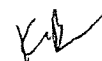
This Agreement has been negotiated and entered into in the State of Nevada, and shall be governed by, construed and enforced in accordance with the internal laws of the State of Nevada.

18. COUNTERPARTS.

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

19. ATTORNEYS' FEES.

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



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

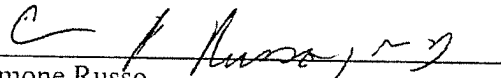
ii) Attorney's Fees For Future Action: Should any PARTY hereto reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, the prevailing PARTY shall be reimbursed by the losing PARTY for all costs and expenses incurred thereby including, but not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



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

Dated: \_\_\_\_\_

**SIMONE RUSSO**

  
Simone Russo

Dated: \_\_\_\_\_

**SUNRISE VILLAS IX HOMEOWNERS'  
ASSOCIATION**

\_\_\_\_\_  
Sunrise Villas IX Homeowner's Association

Dated: \_\_\_\_\_

**IES RESIDENTIAL, INC.**

\_\_\_\_\_  
IES Residential, Inc.

Dated: \_\_\_\_\_

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

\_\_\_\_\_  
COX Communications Las Vegas, Inc., dba COX  
Communications

Dated: \_\_\_\_\_

**PW JAMES MANAGEMENT &  
CONSULTING, LLC**

\_\_\_\_\_  
PW James Management & Consulting, LLC



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

Dated: \_\_\_\_\_

SIMONE RUSSO

---

Simone Russo

Dated: \_\_\_\_\_

## SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

*Marci J. Hudson-Kirstein*  
Sunrise Villas Homeowner's Association

Dated: \_\_\_\_\_

**IES RESIDENTIAL, INC.**

IES Residential, Inc.

Dated: \_\_\_\_\_

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

COX Communications Las Vegas, Inc., dba COX Communications

Dated: \_\_\_\_\_

**PW JAMES MANAGEMENT &  
CONSULTING, LLC**

PW James Management & Consulting, LLC

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

Dated: \_\_\_\_\_

**SIMONE RUSSO**

\_\_\_\_\_  
Simone Russo

Dated: \_\_\_\_\_

**SUNRISE VILLAS IX HOMEOWNERS'  
ASSOCIATION**

\_\_\_\_\_  
Sunrise Villas IX Homeowner's Association

Dated: 12/4/19

**IES RESIDENTIAL, INC.**

\_\_\_\_\_  
*Robert W. Weller* VP  
IES Residential, Inc.

Dated: \_\_\_\_\_

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

\_\_\_\_\_  
COX Communications Las Vegas, Inc., dba COX  
Communications

Dated: \_\_\_\_\_

**PW JAMES MANAGEMENT &  
CONSULTING, LLC**

\_\_\_\_\_  
PW James Management & Consulting, LLC

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

Dated: \_\_\_\_\_

**SIMONE RUSSO**

\_\_\_\_\_  
Simone Russo

Dated: \_\_\_\_\_

**SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION**

\_\_\_\_\_  
Sunrise Villas IX Homeowner's Association

Dated: \_\_\_\_\_

**IES RESIDENTIAL, INC.**

\_\_\_\_\_  
IES Residential, Inc.

Dated: 1/2/20

**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 &amp; FINK, LLP

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

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

Dated: \_\_\_\_\_

MORRIS, SULLIVAN &amp; LEMKUL

By: 

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

Dated: \_\_\_\_\_

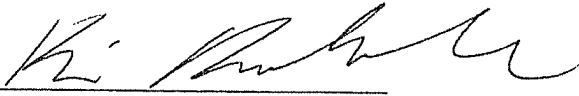
SGRO &amp; ROGER

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*

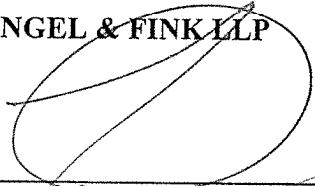
**APPROVED AS TO FORM AND CONTENT:**

Dated: \_\_\_\_\_

**LAW OFFICE OF DAVID SAMPSON, LLC**

By: \_\_\_\_\_  
 David Sampson, Esq.  
 Law Office of David Sampson, LLC  
*Attorneys for Plaintiff*

Dated: 1/10/20

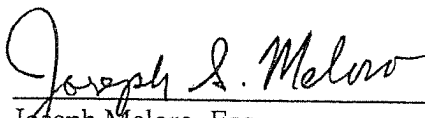
**SPRINGEL & FINK LLP**  
  
 By: \_\_\_\_\_  
 Leonard T. Fink, Esq.  
*Attorneys for Defendant,*  
*Sunrise Villas IX Homeowners' Association*

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 &amp; FINK LLP

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

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

Dated: \_\_\_\_\_

MORRIS, SULLIVAN &amp; LEMKUL

By: 

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

Dated: \_\_\_\_\_


SGRO &amp; 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: \_\_\_\_\_

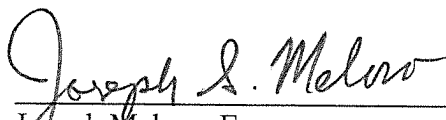
**MORRIS, SULLIVAN & LEMKUL**

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*

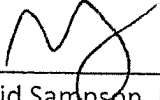
STIPULATION BETWEEN SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AND SIMONE RUSSO RELATED TO CASE A-17-753606 (SIMONE RUSSO V. COX COMMUNICATIONS LAS VEGAS, INC.).

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: \_\_\_\_\_

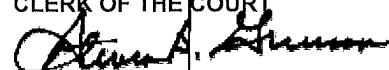
SPRINGEL & FINK LLP

By:

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

# Exhibit 8

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

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

vs.

CASE NO: A-17-753606-C

DEPT. NO: XVI

HEARING REQUESTED

COX COMMUNICATIONS LAS VEGAS,

INC., D/B/A COX COMMUNICATIONS,

IES RESIDENTIAL, INC., SUNRISE

VILLAS IX HOMEOWNERS

ASSOCIATION, J & G LAWN

MAINTENANCE, KEVIN BUSHBAKER,

PWJAMES MANAGEMENT &

CONSULTING, LLC., J. CHRIS

SCARCELLI, DOE LANDSCAPER,

RICHARD DUSLAK, JUSTIN SESMAN,

AND DOES I V, and ROE

CORPORATIONS I V, inclusive,

Defendants.

**DEFAULT JUDGMENT**

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

Past Medical Expenses: \$ 592,846.46

Future Medical Expenses: \$ 250,000.00



1 General Damages: \$ 24,157,153.54

2 **TOTAL JUDGMENT:** \$ 25,000,000.00


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

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

8  
9   
10 DISTRICT JUDGE

11  
12 Submitted by:

13  
14 LAW OFFICE OF DAVID SAMPSON, LLC.  
15

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

# Exhibit 9

A-17-753606-C

DISTRICT COURT  
CLARK COUNTY, NEVADA

Negligence - Premises Liability

COURT MINUTES

December 17, 2019

A-17-753606-C

Simone Russo, Plaintiff(s)

vs.

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

December 17, 2019

09:00 AM

Plaintiff's Application for Judgment by Default

HEARD BY: Williams, Timothy C.

COURTROOM: RJC Courtroom 03H

COURT CLERK: Darling, Christopher

RECORDER:

REPORTER: Isom, Peggy

PARTIES PRESENT:

David F. Sampson

Attorney for Plaintiff

## JOURNAL ENTRIES

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

# Exhibit 10

1 KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

2 EVAN K. SIMONSEN, ESQ.

Nevada Bar No.: 13762

3 **BIGHORN LAW**

4 2225 E. Flamingo Rd.

Building 2, Suite 300

5 Las Vegas, Nevada 89119

Email: [Kimball@BighornLaw.com](mailto:Kimball@BighornLaw.com)

6 [Evans@BighornLaw.com](mailto:Evans@BighornLaw.com)

7 *Attorneys for Defendants/Counterclaimants*

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 QBE INSURANCE CORPORATION,  
11 individually,

CASE NO.: 2:20-cv-02104-RFB-EJY

12 Plaintiff,

13 vs.

14 SIMONE RUSSO, RICHARD DUSLAK and  
15 JUSTIN SESMAN,

16 Defendants.

**ANSWER, COUNTERCLAIM AND THIRD-  
PARTY COMPLAINT**

17 RICHARD DUSLAK and JUSTIN SESMAN,  
18

19 Counterclaimants,

20 vs.

21 QBE INSURANCE CORPORATION,  
22

23 Counterdefendants.  
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1 RICHARD DUSLAK and JUSTIN SESMAN,

2 Third-Party Plaintiffs,

3 vs.

4 COMMUNITY ASSOCIATION  
5 UNDERWRITERS OF AMERICA, INC.;  
6 SUNRISE VILLAS IX HOMEOWNERS'  
7 ASSOCIATION; DOES I-X AND ROE  
BUSINESS ENTITIES I-X,

8 Third-Party Defendants.

9  
10 **ANSWER**

11 Defendants RICHARD DUSLAK and JUSTIN SESMAN (hereinafter "Richard" and  
12 "Justin"), by and through their counsel of record KIMBALL JONES, ESQ. and EVAN K.  
13 SIMONSEN, ESQ., with the Law Offices of **BIGHORN LAW**, hereby answers Plaintiff's First  
14 Amended Complaint for Declaratory Relief as follows:

15 **PARTIES**

- 16
- 17 1. Answering paragraph 1 of the complaint, RICHARD and JUSTIN do not have sufficient  
18 knowledge or information upon which to base a belief as to the truth of the allegations  
19 contained in this paragraph and, on that basis, deny the allegations contained therein.
  - 20 2. Answering paragraph 2 of the complaint, RICHARD and JUSTIN do not have sufficient  
21 knowledge or information upon which to base a belief as to the truth of the allegations  
22 contained in this paragraph and, on that basis, deny the allegations contained therein
  - 23 3. Answering paragraph 3 of the complaint, RICHARD and JUSTIN admit the allegations  
24 contained therein.
  - 25 4. Answering paragraph 4 of the complaint, RICHARD and JUSTIN deny the allegations  
26 contained therein.

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6. Answering paragraph 6 of the complaint, RICHARD and JUSTIN admit the allegations contained therein.

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8. Answering paragraph 8 of the complaint, RICHARD and JUSTIN admit they are not named in the UNDERLYING MATTER (*attached as exhibit 1 to QBE's Amended Complaint*). RICHARD and JUSTIN deny that the initial complaint made by RUSSO did not include an alleged connection between J&G Lawn Maintenance and SUNRISE VILLAS HOA as the complaint attached by QBE specifically alleges that Defendants and each of them were authorized agents, servants, and employees of each other and were acting within the course and scope of their employment. Otherwise, RICHARD and JUSTIN do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained in this paragraph and, on that basis, deny the allegations contained therein.

- 1 9. Answering paragraph 9 of the complaint, RICHARD and JUSTIN admit the allegations  
2 contained therein, relying on the representation that Exhibit 2 and Exhibit 3 to QBE's  
3 Complaint are authentic.
- 4 10. Answering paragraph 10 of the complaint, RICHARD and JUSTIN admit the allegations  
5 contained therein, relying on the representation that Exhibit 2 and Exhibit 3 to QBE's  
6 Complaint are authentic.
- 7 11. Answering paragraph 11 of the complaint, RICHARD and JUSTIN admit QBE issued an  
8 insurance policy to SUNRISE, which should have provided for a defense and  
9 indemnification of RICHARD and JUSTIN in the UNDERLYING MATTER. RICHARD  
10 and JUSTIN do not have sufficient knowledge or information upon which to base a belief as  
11 to the truth of the other allegations contained in this paragraph and, on that basis, deny the  
12 allegations contained therein.
- 13 12. Answering paragraph 12 of the complaint, RICHARD and JUSTIN deny the allegations  
14 therein.
- 15 13. Answering paragraph 13 of the complaint, RICHARD and JUSTIN deny the allegations  
16 therein.
- 17 14. Answering paragraph 14 of the complaint, RICHARD and JUSTIN deny they were  
18 independent contractors and admit they were employees of SUNRISE. RICHARD and  
19 JUSTIN deny that any party in the UNDERLYING MATTER had any right or ability to alter  
20 the reality of their employment status with SUNRISE and/or the rights and protections owed  
21 to RICHARD and JUSTIN, regardless of whether or not parties in the UNDERLYING  
22 MATTER erroneously opined and/or stipulated that RICHARD and JUSTIN were  
23 independent contractors rather than employees. RICHARD and JUSTIN deny that any  
24 purported stipulated language between parties in the UNDERLYING MATTER has any  
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1 legal impact on the rights of RICHARD and/or JUSTIN. RICHARD and JUSTIN do not  
2 have sufficient knowledge or information upon which to base a belief as to the truth of the  
3 other allegations contained in this paragraph and, on that basis, deny the allegations  
4 contained therein.

5  
6 15. Answering paragraph 15 of the complaint, it appears this paragraph contains a typographical  
7 error as to the amount of the judgment. With that in mind, RICHARD and JUSTIN admit the  
8 allegations contained therein regarding a \$25,000,000.00 judgment.

9  
10 16. Answering paragraph 16 of the complaint, RICHARD and JUSTIN do not have sufficient  
11 knowledge or information upon which to base a belief as to the truth of the allegations  
12 contained in this paragraph and, on that basis, deny the allegations contained therein.

13  
14 17. Answering paragraph 17 of the complaint, RICHARD and JUSTIN do not have sufficient  
15 knowledge or information upon which to base a belief as to the truth of the allegations  
16 contained in this paragraph and, on that basis, deny the allegations contained therein.

17  
18 18. Answering paragraph 18 of the complaint, RICHARD and JUSTIN do not have sufficient  
19 knowledge or information upon which to base a belief as to the truth of the allegations  
20 contained in this paragraph and, on that basis, deny the allegations contained therein.

21  
22 19. Answering paragraph 19 of the complaint, RICHARD and JUSTIN do not have sufficient  
23 knowledge or information upon which to base a belief as to the truth of the allegations  
24 contain in this paragraph and, on that basis, deny the allegations contained therein.

25  
26 20. Paragraph 20 of the complaint incorporates the preceding paragraphs in the complaint which  
27 do not require any admissions or denials by RICHARD and JUSTIN. To the extent this  
28 paragraph could be construed as calling for a response, RICHARD and JUSTIN admit they  
were "Covered Employees" under the QBE policy and that they were covered employees as a  
matter of law. RICHARD and JUSTIN do not have sufficient knowledge or information upon

1 which to base a belief as to the truth of the other allegations contained in this paragraph and,  
2 on that basis, deny the allegations contained therein.

3 21. Answering paragraph 21 of the complaint, RICHARD and JUSTIN admit they have valid  
4 claims against QBE and SUNRISE and that QBE owed RICHARD and JUSTIN a duty to  
5 defend and indemnify in connection with QBE's insurance policy in the UNDERLYING  
6 MATTER. Furthermore, RICHARD and JUSTIN are entitled to recover funds from QBE and  
7 SUNRISE to satisfy the duly entered judgment against them. RICHARD and JUSTIN do not  
8 have sufficient knowledge or information upon which to base a belief as to the truth of the  
9 other allegations contained in this paragraph and, on that basis, deny the allegations  
10 contained therein.  
11

12 22. Answering paragraph 22 of the complaint, RICHARD and JUSTIN deny the allegations and  
13 opinions contained therein.  
14

15 23. Answering paragraph 23 of the complaint, this allegation appears to be directed to RUSSO  
16 only. To the degree a response is requested, RICHARD and JUSTIN do not have sufficient  
17 knowledge or information upon which to base a belief as to the truth of the allegations  
18 contained in this paragraph and, on that basis, deny the allegations contained therein.  
19

20 24. Answering paragraph 24 of the complaint, this allegation appears to be directed to RUSSO  
21 only. To the degree a response is requested, RICHARD and JUSTIN do not have sufficient  
22 knowledge or information upon which to base a belief as to the truth of the allegations  
23 contained in this paragraph and, on that basis, deny the allegations contained therein.  
24

25 25. Answering paragraph 25 of the complaint, RICHARD and JUSTIN reassert their prior  
26 admissions and denials as outlined in the prior paragraphs.

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1 26. Answering paragraph 26 of the complaint, RICHARD and JUSTIN do not have sufficient  
2 knowledge or information upon which to base a belief as to the truth of the allegations  
3 contained in this paragraph and, on that basis, deny the allegations contained therein.

4 27. Answering paragraph 27 of the complaint, RICHARD and JUSTIN deny the allegations and  
5 opinions contained therein.

6 28. Answering paragraph 28 of the complaint, RICHARD and JUSTIN admit the allegations and  
7 opinions contained therein.

8 29. Answering paragraph 29 of the complaint, RICHARD and JUSTIN admit the allegations and  
9 opinions contained therein.

10 30. Plaintiff's prayer for relief immediately following paragraph 29 of the complaint does not  
11 contain any factual allegations that would require a response from RICHARD and JUSTIN.  
12 To the extent the prayer for relief could be construed as calling for a response, RICHARD  
13 and JUSTIN deny that Plaintiff is entitled to the relief requested therein.

14  
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16 **AFFIRMATIVE AND OTHER DEFENSES**

17 RICHARD and JUSTIN assert the following affirmative defenses to Plaintiff's complaint.

18 **FIRST DEFENSE**

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

21  
22 **SECOND DEFENSE**

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

25 **THIRD DEFENSE**

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

**FOURTH DEFENSE**

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

**FIFTH DEFENSE**

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

**SIXTH DEFENSE**

Plaintiff failed to act in good faith and acted without with justification or probable cause and with malice toward its insureds.

**SEVENTH DEFENSE**

Plaintiff's actions failed to comply with N.R.S. 686A.310.

**EIGHTH DEFENSE**

Plaintiff's conduct was malicious, oppressive and/or fraudulent pursuant to N.R.S. 42.010.

**NINTH DEFENSE**

Plaintiff's cause of action is barred by the doctrine of are barred by reason of laches, waiver, estoppel, unclean hands and/or any other equitable defense.

**TENTH DEFENSE**

Plaintiff failed to properly and fully mitigate, minimize or avoid damages they allegedly sustained.

**ELEVENTH DEFENSE**

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

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1 **TWELFTH DEFENSE**

2 Pursuant to F.R.C.P. 11, as amended, all possible affirmative and other defenses may not  
3 have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon  
4 the filing of this answer, and therefore, RICHARD and JUSTIN reserve the right to amend this  
5 answer to allege additional affirmative defenses if subsequent investigation so warrants.  
6

7 WHEREFORE, and for the reasons set forth in the counterclaim below, RICHARD and JUSTIN  
8 pray for judgment as follows:

- 9 1. For a declaration and determination that RICHARD and JUSTIN are insureds under the  
10 policy between Plaintiff and SUNRISE, and that the defense of the claims against RICHARD  
11 and JUSTIN were duly tendered and/or constructively tendered to Plaintiff, that Plaintiff did  
12 owe RICHARD and JUSTIN a defense, indemnification, fiduciary duties, and good faith and  
13 fair dealing for claims arising out of the underlying action.  
14  
15 2. For attorney's fees;  
16  
17 3. For costs of suit;  
18  
19 4. For interest; and  
20  
21 5. For all other relief the Court deems just and proper.

22 **COUNTERCLAIM/THIRD-PARTY COMPLAINT**

23 COMES NOW Counterclaimants/Third-Party Plaintiffs RICHARD DUSLAK and JUSTIN  
24 SESMAN, by and through their attorney, KIMBALL JONES, ESQ. and EVAN K. SIMONSEN,  
25 ESQ., with the Law Offices of **BIGHORN LAW**, and for their claims for relief against  
26 Counterdefendant QBE INSURANCE CORPORATION, Third-Party Defendant COMMUNITY  
27 ASSOCIATION UNDERWRITERS OF AMERICA, INC. and Third-Party Defendant SUNRISE  
28 VILLAS IX HOMEOWNERS' ASSOCIATION, and each of them, allege and complain as follows:

///

**PARTIES**

1. At all times relevant to this action, Counterclaimants/Third-Party Plaintiffs RICHARD and JUSTIN (hereinafter “RICHARD and JUSTIN”) were residents of Clark County, Nevada.
2. At all times relevant to this action, Co-Defendant SIMONE RUSSO (“Russo”) was a resident of Clark County, Nevada.
3. At all times relevant to this action, Plaintiff/Counterdefendant, QBE INSURANCE CORPORATION (hereinafter “QBE”) was at all times relevant to this action an insurance company based in Pennsylvania and was operating and conducting business in Nevada.
4. At all times relevant to this action, Third-Party Defendant COMMUNITY ASSOCIATION UNDERWRITERS OF AMERICA, INC. (hereinafter “CAU”) was at all times relevant to this action an insurance underwriting company based in Pennsylvania and doing business in Nevada.
5. That QBE issued insurance policies, some of which were underwritten by CAU. That QBE and CAU are the parent, and/or subsidiary of, alter-ego of, doing business as, also known as, and/or otherwise sharing an identity or continuity of interests with each and every other and, therefore, are contractually, jointly and severally, legally, equitably, and/or otherwise liable for and/or with each other herein.
6. At all times relevant to this action, Third-Party Defendant, SUNRISE VILLAS IX HOMEOWNERS’ ASSOCIATION (hereinafter “SUNRISE”) was at all times relevant to this action a business organization, form unknown, doing business in Nevada.
7. At all times relevant to this action, SUNRISE was a business organization, form unknown, which employed RICHARD and JUSTIN and held a policy for insurance sold by QBE and/or CAU, which covered SUNRISE’s employees, including RICHARD and JUSTIN.
8. That the true names and capacities, whether individual, corporate, partnership, associate or otherwise, of Third-Party Defendants, DOES I through X and ROE BUSINESS ENTITIES I

1 through X, are unknown to RICHARD and JUSTIN, who therefore sue said Third-Party  
2 Defendants by such fictitious names. RICHARD and JUSTIN are informed and believe and  
3 thereon allege that each of the Third-Party Defendants designated herein as DOE and ROE  
4 are responsible in some manner for the events and happenings referred to and caused  
5 damages proximately to RICHARD and JUSTIN as herein alleged, and that RICHARD and  
6 JUSTIN will seek leave of this Court to amend this Third-Party Complaint to insert the true  
7 names and capacities of DOES I through X and ROE BUSINESS ENTITIES I through X,  
8 when the same have been ascertained, and to join such Third-Party Defendants in this action.  
9

#### 10 **GENERAL ALLEGATIONS**

- 11 9. On and before August 27, 2016 RICHARD and JUSTIN were working for SUNRISE as  
12 maintenance personnel and landscapers.  
13
- 14 10. On August 27, 2016 Co-Defendant RUSSO tripped over a cable and was injured while on the  
15 property at SUNRISE. The injury allegedly resulted from negligent act or omission by  
16 RICHARD and JUSTIN.  
17
- 18 11. On April 6, 2017 RUSSO filed a lawsuit against SUNRISE claiming that SUNRISE, its  
19 maintenance personnel and/or landscapers, and other individuals (including certain DOE and  
20 ROE Third-Party Defendants) had created a hazard on the property of 4617 Madreperla in  
21 the SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION, which hazard caused harm to  
22 RUSSO (Court Case No. A-17-753606-C). See Exhibit "1". Upon information and belief,  
23 initial information received by RUSSO from SUNRISE indicated that "J&G LAWN  
24 MAINTENANCE" handled the maintenance and landscaping at the time RUSSO was  
25 injured and, as a result, "J&G LAWN MAINTENANCE" was named as a defendant in the  
26 action. *Id.*  
27

28 ///

12. That QBE and/or CAU, and each of them, issued policy number CAU234378-1, covering named insured SUNRISE (including employees acting in the course and scope of their employment), and “Covered Employees” as defined in said policy, which policy insured SUNRISE’s “Covered Employees”, as defined in the said policy, and others and covered SUNRISE’s “Covered Employees”, and others, for the losses RUSSO alleged he suffered in Case No. A-17-753606-C. See Exhibit “2”. That pursuant to the policy of insurance, QBE and/or CAU, and each of them, retained counsel to defend SUNRISE in Case No. A-17-753606-C.
13. At all relevant times related to the August 27, 2016 incident, RICHARD and JUSTIN were agents, employees, and/or assigns of SUNRISE and were contractually, legally, equitably, and/or otherwise insureds by SUNRISE, and/or QBE, and/or CAU, and/or DOES I through X, and/or ROE BUSINESS ENTITIES I through X, and each of them.
14. Prior to the subject incident and for some time thereafter, SUNRISE paid RICHARD and JUSTIN for work.
15. Prior to the subject incident and for some time thereafter, SUNRISE paid RICHARD as an onsite maintenance / pool man.
16. Prior to the August 27, 2016 incident, there were times when Secretary John Morales of SUNRISE’s board oversaw work performed by RICHARD and JUSTIN.
17. Prior to the August 27, 2016 incident, there were times when Secretary John Morales of SUNRISE’s board would inspect the work performed by RICHARD and JUSTIN, provide corrective feedback and direction regarding how RICHARD and JUSTIN could better perform their work, and assign projects for RICHARD and JUSTIN to work on.
18. At all relevant times during their working relationship with SUNRISE, SUNRISE provided RICHARD and JUSTIN with an hourly work schedule.



19. At all relevant times during their working relationship with SUNRISE, the amount SUNRISE paid RICHARD and JUSTIN was entirely based on hours worked and the hourly wage.
20. At all relevant times during their working relationship with SUNRISE, SUNRISE actually paid RICHARD and JUSTIN all wages owed based on the hours RICHARD and JUSTIN worked.
21. At all relevant times during their working relationship with SUNRISE, the tasks assigned to RICHARD and JUSTIN were assigned by SUNRISE or by a member of SUNRISE's board.
22. At all relevant times during their working relationship with SUNRISE, SUNRISE had the discretion to choose the manner in which RICHARD and JUSTIN were to perform their work for SUNRISE, if SUNRISE chose to do so.
23. At all relevant times during their working relationship with SUNRISE, all equipment and materials for tasks to be performed by RICHARD and JUSTIN were provided by SUNRISE; RICHARD and JUSTIN were not required to provide their own equipment or materials.
24. At all relevant times during their working relationship with SUNRISE, all equipment for lawncare, property maintenance and pool maintenance was provided by SUNRISE. Further, SUNRISE paid RICHARD a monthly payment for RICHARD's cell phone bill.
25. At all relevant times during their working relationship with SUNRISE, SUNRISE did not require RICHARD or JUSTIN to have special skills beyond those of maintenance persons; rather, the tasks assigned were simple tasks that one would expect an onsite maintenance man or pool man to be able to perform.
26. The working relationship between SUNRISE and RICHARD ended on a date after the subject incident, when SUNRISE hired J&G for landscaping and determined that with the contracting of J&G, SUNRISE no longer needed an onsite maintenance/pool man.

///

27. At all relevant times during their working relationship with SUNRISE, RICHARD and JUSTIN were provided a relatively consistent work schedule during which time RICHARD and JUSTIN were expected to be working for SUNRISE.

28. At all relevant times during their working relationship with SUNRISE, RICHARD and JUSTIN were considered employees by SUNRISE for tax purposes and were provided a W-2 by SUNRISE.

29. At all relevant times during their working relationship with SUNRISE, RICHARD and JUSTIN provided work for SUNRISE, which SUNRISE was required to provide according to their agreement with the homeowners in the association.

30. At all relevant times during their working relationship with SUNRISE, RICHARD and JUSTIN provided work for the association and the work provided included maintenance of property, which SUNRISE was required to provide under the homeowner association's bi-laws.

31. At all relevant times during their working relationship with SUNRISE, SUNRISE never required that RICHARD or JUSTIN hold a business license.

32. At all relevant times during their working relationship with SUNRISE, the previously identified policy of insurance from QBE and/or CAU was in effect.

33. At all relevant times during their working relationship with SUNRISE, SUNRISE referred to RICHARD and JUSTIN as employees.

34. At all relevant times during their working relationship with SUNRISE, RICHARD and JUSTIN were never referred to in writing by SUNRISE as independent contractors.

35. At all relevant times during their working relationship with SUNRISE, RICHARD and JUSTIN were considered SUNRISE employees for purposes of the QBE insurance policy.

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- 1 36. The incident of August 27, 2016, the aforesaid Case No. A-17-753606-C (“the  
2 UNDERLYING MATTER”), and related claims were noticed upon and submitted to  
3 RICHARD, JUSTIN, SUNRISE, QBE, CAU, DOES I through X and ROE BUSINESS  
4 ENTITIES I through X, and each of them.  
5
- 6 37. Upon information and belief, during litigation of the UNDERLYING MATTER, QBE and/or  
7 CAU, and each of them, retained defense counsel to defend RUSSO’s claims against  
8 SUNRISE.  
9
- 10 38. Upon information and belief, during litigation of the UNDERLYING MATTER, defense  
11 counsel for SUNRISE consulted with and/or informed QBE and/or CAU, and SUNRISE  
12 regarding its litigation strategy.  
13
- 14 39. Upon information and belief, during litigation of the UNDERLYING MATTER, defense  
15 counsel for SUNRISE provided information to QBE and/or CAU and SUNRISE regarding  
16 the discovery and evidence produced in the case.  
17
- 18 40. Upon information and belief, during litigation of the UNDERLYING MATTER, defense  
19 counsel for SUNRISE submitted its billing requests and billing to QBE and/or CAU, for  
20 payment and approval.  
21
- 22 41. Upon information and belief, during litigation of the UNDERLYING MATTER, defense  
23 counsel for SUNRISE provided QBE and/or CAU and SUNRISE copies of the disclosures,  
24 discovery and evidence in the case.  
25
- 26 42. Upon information and belief, during litigation of the UNDERLYING MATTER, SUNRISE  
27 informed RUSSO that “J&G LAWN MAINTENANCE” was not handling maintenance or  
28 landscaping for SUNRISE at the time RUSSO was injured, and that in fact RICHARD and  
JUSTIN were employed by SUNRISE to handle maintenance and landscaping for SUNRISE  
at the time RUSSO was injured.

- 1 43. Upon information and belief, during the litigation of the underlying matter, SUNRISE  
2 provided a response to one of RUSSO's interrogatories wherein SUNRISE stated that  
3 RICHARD and JUSTIN were employed by SUNRISE at the time of the subject incident.
- 4 44. Upon information and belief, on November 29, 2017, RUSSO filed a motion in Case No. A-  
5 17-753606-C seeking to amend the Complaint in that matter to add additional defendants.  
6 See Exhibit "3". The amended complaint identified RICHARD and JUSTIN as Defendants  
7 and alleged that Defendants, and each of them (which would include RICHARD and  
8 JUSTIN) were responsible for the maintenance and landscaping for SUNRISE when RUSSO  
9 was injured. See Exhibit "4," at paragraphs 13, 19, and 20. At the time the Amended  
10 Complaint was filed QBE and/or CAU, and each of them, were actively defending SUNRISE  
11 in Case No. A-17-753606-C.
- 12 45. Upon information and belief, the Motion to Amend and Amended Complaint were provided  
13 to counsel for all parties in Case No. A-17-753606-C, which included counsel for SUNRISE  
14 as well as QBE and/or CAU, and each of them. *Id.*
- 15 46. Upon information and belief, on December 22, 2017 RUSSO filed a supplement to the  
16 motion to amend the complaint. See Exhibit "5". The supplement specified that SUNRISE  
17 had indicated "J&G LAWN MAINTENANCE" was not handling landscaping and  
18 maintenance for SUNRISE at the time RUSSO was injured, and again sought leave to amend  
19 the complaint, as set forth in the proposed amended complaint, which identified RICHARD  
20 and JUSTIN as the actual individuals responsible for landscaping and maintenance at the  
21 SUNRISE property. See Exhibit "5". This proposed amended complaint was provided to  
22 counsel for QBE, CAU and SUNRISE, and each of them.
- 23 47. Upon information and belief, on February 7, 2018 the Court in Case No. A-17-753606-C  
24 entered an Order permitting RUSSO to amend his Complaint and add RICHARD and  
25  
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28

1 JUSTIN as Defendants in Case No. A-17-753606-C. See Exhibit “6”. This order was  
2 provided to QBE, CAU and SUNRISE, and each of them.

3 48. That the Amended Complaint in Case No. A-17-753606-C alleged, *inter alia*, negligence  
4 against RICHARD and JUSTIN, including specific claims that RICHARD and JUSTIN  
5 “...maintained and controlled those premises...” as “...duly authorized agents ... acting  
6 within the course of their employment and scope of their authority...” for SUNRISE at the  
7 time RUSSO was injured. See Exhibit “4,” at paragraphs 13, 19, and 20. QBE and/or CAU,  
8 and each of them, were defending SUNRISE, and QBE, CAU and SUNRISE, and each of  
9 them, were provided the Amended Complaint at this time either directly or through counsel  
10 in the UNDERLYING MATTER.  
11

12 49. On February 13, 2018, RUSSO served JUSTIN with the Amended Complaint. See Exhibit  
13 “8”.  
14

15 50. On February 14, 2018, RUSSO served RICHARD with the Amended Complaint. See  
16 Exhibit “7”.  
17

18 51. RICHARD and JUSTIN advised QBE, CAU and SUNRISE, and each of them, of the suit. In  
19 response, SUNRISE informed RICHARD that SUNRISE had insurance coverage to protect  
20 RICHARD and JUSTIN from the claims being brought against them in the UNDERLYING  
21 MATTER, that SUNRISE already had attorneys in place defending RICHARD and JUSTIN  
22 in the UNDERLYING MATTER and that RICHARD and JUSTIN had nothing to worry  
23 about with respect to the claims made against them since QBE’s, CAU’s and SUNRISE’s,  
24 and each of their, attorneys were already defending RICHARD and JUSTIN.  
25

26 52. At the time the Amended Complaint was filed in the UNDERLYING MATTER, QBE, CAU  
27 and SUNRISE, had documents in their possession and/or available to them, which  
28

1 demonstrated conclusively that RICHARD and JUSTIN were employees of SUNRISE, at the  
2 time of the subject incident.

3 53. QBE, CAU and SUNRISE, and each of them, were in fact aware that RICHARD and JUSTIN  
4 were employees of SUNRISE, at the time of the incident giving rise to the UNDERLYING  
5 MATTER.

6  
7 54. QBE, CAU and SUNRISE, and each of them, had retained counsel, who was actively  
8 defending SUNRISE in Case No. A-17-753606-C, when the Complaint was amended to add  
9 RICHARD and JUSTIN as Defendants in the underlying action, which counsel had a  
10 tripartite relationship with SUNRISE and Defendants, and each of them, including QBE  
11 and/or CAU, who was well aware of, and were on notice of, the fact that RICHARD and  
12 JUSTIN had been sued in Case No. A-17-753606-C, at least as of February 14, 2018.

13  
14 55. Upon information and belief, QBE, CAU and SUNRISE, and each of them, received  
15 constructive tender of the action against RICHARD and JUSTIN, Case No. A-17-753606-C.  
16 See *California Shoppers, Inc., v. Royal Globe Ins. Co.*, 175 Cal.App.3d 1, 799 P.2d 1360  
17 (1985); *Millennium Labs., Inc. v. Darwin Select Ins. Co.*, 2014 U.S. Dist. LEXIS 170439  
18 (S.D. Cal. Dec. 9, 2014); *Dearborn Ins. Co. v. International Surplus Lines Ins. Co.*, No. 1-  
19 97-0724, 1999 Ill. App. LEXIS 667 (Ill. Ct. App. Sept. 23, 1999); *Gray v. Zurich Ins. Co.*, 65  
20 Cal. 2d 263, 276; *Devin v. United Servs. Auto. Ass'n.*, 6 Cal. App. 4th 1149, 1157 (1992)  
21 (“The duty to defend arises as long as the facts (either as expressed or implied in the third  
22 party’s complaint, or as learned from other sources) give rise to a potentially covered claim .  
23 . . .”) (citing *Fresno Economy Import Used Cars, Inc. v. United States Fidelity & Guar. Co.*,  
24 76 Cal. App. 3d 272, 279 (1977)).  
25  
26

27 ///

28 ///

1 56. That when Counterdefendants, and each of them including QBE became aware of the action  
2 against RICHARD and JUSTIN, Case No. A-17-753606-C, Counterdefendants, and each of  
3 them including QBE were on notice to investigate the issue of coverage.

4 57. That QBE, CAU and SUNRISE, and each of them, failed to investigate the issue of coverage  
5 for RICHARD and JUSTIN, even after becoming aware of the action against RICHARD and  
6 JUSTIN.

7  
8 58. That “an insurer . . . bears a duty to defend its insured whenever it ascertains facts which give  
9 rise to the potential of liability under the policy.” See *Century Surety v. Andrew*, 134  
10 Nev.Adv.Op. 100, 432 P.3d 180 (2018) (citing *United Nat’l Ins. Co. v. Frontier Ins. Co.,*  
11 *Inc.*, 120 Nev. 678, 684 (2004)).

12  
13 59. That when QBE became aware of the Amended Complaint in Case No. A-17-753606-C,  
14 QBE ascertained (*and reasonably should have ascertained*) facts giving rise to the potential  
15 of liability under the policy covering RICHARD and JUSTIN.

16 60. That when QBE became aware of the Amended Complaint in Case No. A-17-753606-C, had  
17 QBE performed an investigation it would have ascertained (*and reasonably should have*  
18 *ascertained*) facts giving rise to the potential of liability under the policy covering  
19 RICHARD and JUSTIN.

20  
21 61. That “the duty to defend arises when there is a potential for coverage based on the allegations  
22 in a complaint.” See *United Nat’l Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev. 678, 684  
23 (2004). That when QBE learned of the Amended Complaint in Case No. A-17-753606-C,  
24 QBE was aware there was a potential for coverage based on the allegations against  
25 RICHARD and JUSTIN in the said Amended Complaint.

26  
27 62. That the Nevada Supreme Court has held that “where there is potential for coverage based on  
28 ‘comparing the allegations of the complaint with the terms of the policy,’ an insurer does

1 have a duty to defend.” See *Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180  
2 (2018).

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

6  
7 (a) Any natural person:

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

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

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

12  
13 See *Exhibit “2,”* at P. SVHA 000018.

14 64. That on August 27, 2016, RICHARD and JUSTIN were natural people who were in the  
15 service of SUNRISE, whom SUNRISE compensated directly by salary, wages, or  
16 commissions, and whom SUNRISE had the right to direct and control while RICHARD and  
17 JUSTIN performed duties for SUNRISE. See *Exhibit “9”*. That RICHARD and JUSTIN  
18 were parties to a contract of insurance with QBE, CAU and SUNRISE, and each of them,  
19 and/or were an intended beneficiaries to the same. The said contract carried liability coverage  
20 for losses such as those suffered by RUSSO.

21  
22 65. That *Exhibit “9,”* at page SVHA0000557, are minutes from the February 17, 2016 SUNRISE  
23 Board of Directors Meeting, wherein SUNRISE stated, “The Board reviewed the job  
24 descriptions as submitted by employees Richard Duslak and Justin Sesman. Secretary  
25 Morales [Secretary of SUNRISE] volunteered to oversee the work performed on property by  
26 Mr. Duslak and Mr. Sesman and will report to the Board regarding progress on maintenance  
27 projects. A motion was made by Treasurer Alexis seconded by Secretary Morales for the  
28



1 petty cash to not be maintained by the employees at this time.” This shows that RICHARD  
2 and JUSTIN were in the service of SUNRISE, were compensated by SUNRISE, and that  
3 SUNRISE (*via Secretary Morales*) had, and exercised, the right to direct and control  
4 RICHARD and JUSTIN, while RICHARD and JUSTIN performed duties for SUNRISE.

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

11  
12 67. That *Exhibit “9,”* at page SVHA0000561, are minutes from the September 8, 2016  
13 SUNRISE Board of Directors Meeting, wherein SUNRISE stated under the heading Richard  
14 Duslak, “Board unanimously agreed to terminate the position of a onsite maintenance/pool  
15 man the board is in agreement that there is no longer a need for this position therefore they  
16 are all in agreement to terminate Mr. Duslak.” This shows RICHARD was employed by  
17 SUNRISE on August 27, 2016 and that SUNRISE did not terminate him until at least  
18 September 8, 2016, which was after August 27, 2016 when RUSSO was injured.

19  
20 68. That *Exhibit “9,”* at page SVHA0000564 are minutes from the November 16, 2015  
21 SUNRISE Board of Directors Meeting, wherein SUNRISE stated, “It was the consensus of  
22 the Board that Richard Dulkas (sic), Justin, and Carson has provided valuable service to the  
23 community. The Board agreed to holiday gratuity for \$300 to Richard, \$300 for Carson, and  
24 \$100 for Justin and directed the manager to process payment for holiday gratuity through  
25 Covenant.” This shows SUNRISE compensated RICHARD and JUSTIN, in addition to  
26 providing RICHARD and JUSTIN with compensation in the form of wages, salary, and/or  
27 commission.  
28

69. That *Exhibit “9,”* at page SVHA0000566 is a record of SUNRISE paying \$100.00 to JUSTIN for “Holiday gratuity”. This shows SUNRISE compensated JUSTIN, in addition to providing JUSTIN with compensation in the form of wages, salary, and/or commission.

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

71. That QBE and/or CAU Defended SUNRISE in Case No. A-17-753606-C, yet, despite having a duty to defend RICHARD and JUSTIN against RUSSO’s claim, and despite having knowledge that RUSSO’s claim was proceeding against SUNRISE, RICHARD and JUSTIN, QBE and/or CAU never took any steps to defend or indemnify RICHARD and JUSTIN in Case No. A-17-753606-C.

72. That because QBE and/or CAU never took any steps to defend or indemnify RICHARD and JUSTIN in Case No. A-17-753606-C, the Court entered defaults against RICHARD and JUSTIN in Case No. A-17-753606-C. See Exhibit “11”.

73. Upon information and belief, on September 18, 2019 counsel for RUSSO faxed a letter to QBE, CAU and SUNRISE, and each of them, (*Fax No: 267-757-7434*), and emailed the same letter to QBE, CAU and SUNRISE, and each of them, at email address: [hstavakis@cauinsure.com](mailto:hstavakis@cauinsure.com), which letter stated:

As you aware, some time ago our office initiated litigation against Justin Sesman, Richard Duslak, as well as PW James Management & Consulting related to the above-noted incident. We write at this time to advise

Community Association Underwriters Agency that the Court has entered default against Justin Sesman, Richard Duslak, and PW James Management & Consulting in this matter. We have attached a copy of the defaults for your convenience.

Please contact our office with any questions.

See Exhibit “10”.

74. Upon information and belief, at no time did QBE, CAU and SUNRISE, and each of them, contact the office of counsel for RUSSO, nor did QBE, CAU and SUNRISE, and each of them, at any time deny having received prior notice that Case No. A-17-753606-C included claims against its insureds and “Covered Employees” RICHARD and JUSTIN.

75. Upon information and belief, at no time did QBE, CAU and SUNRISE, and each of them, or any of them, submit, notice, and/or otherwise direct said claim and/or action to any further policy of insurance providing coverage for the same and, in particular, did not submit, notice, and/or direct the same to the attention and consideration of any other policies of general liability insurance.

76. Upon information and belief, the aforesaid legal action (*Case No. A-17-753606-C*) against SUNRISE and others was initially defended by QBE and/or CAU under policy number CAU234378-1, through the association of and payment of a defense firm, Springel & Fink.

77. That at no time did QBE, CAU and SUNRISE, and each of them, defend RICHARD or JUSTIN in Case No. A-17-753606-C, even after being given specific notice that the action was pending against RICHARD and JUSTIN, and even after being notified that defaults had been taken against RICHARD and JUSTIN.

78. That when an insurance company receives notice from an attorney that a default has been taken against a party, the insurance company should inquire regarding the reason for which

1 an attorney would provide such notice. Yet, QBE, CAU and SUNRISE, and each of them,  
2 took no action when advised of RUSSO's default against its insureds, RICHARD and  
3 JUSTIN.

4 79. QBE, CAU and SUNRISE, and each of them, failed to offer, suggest, and/or provide  
5 independent *Cumis* counsel to advise RICHARD and JUSTIN as to the failure to defend  
6 them in Case No. A-17-753606-C, and/or indemnity, or pertinent pleadings and Orders  
7 before and by the Court, and of any related matters.

8  
9 80. That SUNRISE failed to specifically alert QBE and/or CAU that RICHARD and JUSTIN,  
10 who were known to be employees, should be defended by QBE, CAU and SUNRISE, and  
11 each of them, or did inform QBE and/or CAU that RICHARD and JUSTIN were known to  
12 be employees and QBE and/or CAU nevertheless failed to defend RICHARD and JUSTIN.

13  
14 81. That QBE failed to review the discovery in the UNDERLYING MATTER that was available  
15 for review, which demonstrated that RICHARD and JUSTIN were, in fact, SUNRISE  
16 employees covered under QBE's insurance policy.

17 82. That because QBE, CAU and SUNRISE, and each of them, did not defend RICHARD and  
18 JUSTIN despite being aware of the lawsuit, and being aware that default had been taken  
19 against QBE's insureds, on December 17, 2019, the court in Case No. A-17-753606-C  
20 entered Judgment against RICHARD and JUSTIN in the amount of \$25,000,000.00, which  
21 accrues interest at the statutory rate until paid in full. See Exhibit "11". That Notice of Entry of  
22 the said Judgment was filed on December 17, 2019. See Exhibit "12".

23  
24 83. Prior to judgment being entered against RICHARD and JUSTIN, no action or attempt  
25 otherwise to seek or procure Declaratory Relief as to the issue of insurance coverage was  
26 brought by the QBE, CAU and SUNRISE, and each of them, or the DOE and ROE Third-  
27 Party Defendants, or any of them.  
28

1 84. That the conduct of QBE, in not defending RICHARD and JUSTIN, constituted a breach of  
2 the duty to defend under the insurance contract that covered RICHARD and JUSTIN as  
3 “Covered Employees.”

4 85. That under *Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180 (2018) an insurer  
5 is liable for all consequential damages arising out of any breach of the duty to defend an  
6 insured. Additionally, “an insurer’s liability for the breach of the duty to defend is not  
7 capped at the policy limits, even in the absence of bad faith.” The Nevada Supreme Court  
8 subsequently reiterated that the reasonableness of an insurer’s refusal to defend “is irrelevant  
9 for determining damages upon a breach of the duty to defend.” *Nalder v. United Auto Ins.*  
10 *Co.*, No. 70504, 2019 WL 5260073.

11 86. Upon information and belief, on November 4, 2020 counsel for RUSSO faxed a letter to  
12 QBE, CAU and SUNRISE, and each of them, (*Fax No: 267-757-7434*), and emailed the same  
13 letter to QBE, CAU and SUNRISE, and each of them, including QBE and CAU (email  
14 address: [hstavakis@cauinsure.com](mailto:hstavakis@cauinsure.com)) which stated:

15  
16  
17 As you aware, some time ago our office initiated litigation against Justin  
18 Sesman, Richard Duslak, as well as PW James Management & Consulting  
19 related to the above-noted incident. As we informed you over a year ago, the  
20 Court entered default against Justin Sesman, Richard Duslak, and PW James  
21 Management & Consulting in this matter. In December of 2020 the Court  
22 entered Judgment against Justin Sesman, Richard Duslak in the amount of  
23 \$25,000,000.00. We have attached a copy of the Judgment against your  
24 insureds for your convenience. Please contact our office to make  
25 arrangements to satisfy the Judgment against your insureds.  
26  
27

28 See Exhibit “13”.

**FIRST CAUSE OF ACTION****(Breach of Contract – All Counterdefendants)**

87. RICHARD and JUSTIN reallege and reassert each and every statement and allegation contained in the preceding paragraphs as though set forth fully hereunder.
88. At all times pertinent hereto, QBE and/or CAU had a contractual duty to defend and indemnify RICHARD and JUSTIN, regarding certain claims for negligence and resulting injuries caused by them to include, but not limited to, those brought by RUSSO in District Court Case number A-17-753606-C.
89. The failure of QBE and/or CAU to reasonably and continuously defend and/or indemnify RICHARD and/or JUSTIN under said policy insurance coverage and/or other policies of insurance actually and/or potentially affording coverage to RICHARD and/or JUSTIN as alleged herein constitutes a breach of contract on the part of QBE, CAU and SUNRISE, and each of them, under the terms and conditions as the policies set forth.
90. The failure of SUNRISE to ensure that its contracted employees were defended and/or indemnified by QBE and/or CAU, under said policy insurance coverage and/or other policies of insurance, actually and/or potentially affording coverage to RICHARD and/or JUSTIN as alleged herein, constitutes a breach of the employment contract on the part of SUNRISE.
91. QBE, CAU and SUNRISE, and each of them, willfully attempted to strip RICHARD and JUSTIN of their rights as employees and coverage as insureds in the UNDERLYING MATTER. This conspiratorial effort between QBE and/or CAU and that of SUNRISE, is evident from their combined efforts to convince RUSSO, though counsel, to stipulate that RICHARD and JUSTIN were independent contractors in their joint settlement agreement, even though QBE, CAU and SUNRISE, and each of them, all knew and had documentation available to them, that showed RICHARD and JUSTIN were W-2 employees acting in the

1 course and scope of their employment with SUNRISE, at all relevant times in this matter.  
2 That with actual malice and with a conscious disregard for the welfare of RICHARD and  
3 JUSTIN, QBE, CAU and SUNRISE, and each of them, fraudulently attempted to destroy  
4 employment rights, so that SUNRISE would bear no responsibility for negligence and so that  
5 QBE and/or CAU would bear no responsibility to defend and/or indemnify.  
6

7 92. Moreover, QBE, CAU and SUNRISE, and each of them, in seeking to entirely avoid their  
8 responsibilities and duties respecting RICHARD and JUSTIN, through their settlement  
9 agreement, agreed that any settlement would specifically exclude RICHARD and JUSTIN,  
10 and anyone associated or affiliated with them. The settlement release included SUNRISE  
11 employees, except for RICHARD and JUSTIN, or anyone associated or affiliated with them.  
12 The settlement release also specifically stated that, “Nothing in this release shall release,  
13 discharge, or in any way impact [RUSSO’s] rights against RICHARD DUSLAK and/or  
14 JUSTIN SESMAN in any manner,” thereby leaving RICHARD and JUSTIN without  
15 protection in the underlying settlement.  
16

17 93. Furthermore, the release stated that any language in the release that could be read to in any  
18 way impact the rights of RICHARD and JUSTIN against any entity (including QBE and/or  
19 CAU or any other insurer) “SHALL BE DEEMED NULL AND VOID.” Nevertheless, QBE  
20 has now refused to abide by their agreement and has sought to further destroy the rights of  
21 RICHARD and JUSTIN by bringing this action, long after judgment was entered against  
22 RICHARD and JUSTIN. It is evident that QBE now seeks to specifically enforce part of the  
23 language in an agreement—to which RICHARD and JUSTIN were not parties—even though  
24 the language QBE seeks to enforce is specifically stricken since it “SHALL BE DEEMED  
25 NULL AND VOID” to the degree it impacts the rights of RICHARD and JUSTIN.  
26  
27

28 ///

1 94. As such, QBE, CAU and SUNRISE, and each of them, first rejected and refused to abide by  
2 their duties and contractual obligations toward RICHARD and JUSTIN and instead acted  
3 with malice and in bad faith with respect to RICHARD and JUSTIN, by knowingly  
4 withholding the rights and protections they were legally and duty-bound to provide to  
5 RICHARD and JUSTIN. SUNRISE breached its employment agreement and expected  
6 protections as RICHARD's and JUSTIN's employer. QBE and/or CAU breached its  
7 insurance contract and its duty to act in good faith as RICHARD's and JUSTIN's insurer.  
8 Then, after these clear breaches of contract and bad faith actions and omissions, QBE now  
9 seek to destroy RICHARD's and JUSTIN's ongoing rights to protect themselves now that  
10 QBE, CAU and SUNRISE, and each of them, have saddled RICHARD and JUSTIN with a  
11 judgment, which should have been defended against and ultimately paid by QBE, CAU and  
12 SUNRISE, and each of them.

13 95. Because QBE, CAU and SUNRISE, and each of them, breached their contracts and acted in  
14 bad faith toward RICHARD and JUSTIN in these identified instances, and upon information  
15 and belief in many other instances, RICHARD and JUSTIN were defaulted with a massive  
16 judgment in the UNDERLYING MATTER, and RICHARD and JUSTIN are now forced to  
17 retain an attorney to defend themselves and to prosecute this matter.

18 96. Although in their relationship with QBE, CAU and SUNRISE, and each of them, RICHARD  
19 and JUSTIN are clearly the aggrieved parties that have been sorely mistreated by QBE, CAU  
20 and SUNRISE, and each of them, it is QBE that has added insult to injury by suing  
21 RICHARD and JUSTIN to strip them further of their rights.

22 97. That after receiving notice of the damages caused by their malicious breaches of contract and  
23 bad faith, QBE and/or CAU continued to reject its obligation to RICHARD and JUSTIN and  
24



1 indemnify, but instead further damaged RICHARD and JUSTIN by filing suit against  
2 RICHARD and JUSTIN.

3 98. That as a direct and proximate result of the aforesaid breaches of contract on the part of QBE,  
4 CAU and SUNRISE, and each of them, RICHARD and JUSTIN have been damaged in an  
5 amount in excess of Fifteen Thousand Dollars (\$15,000.00).  
6

7 99. RICHARD and JUSTIN have satisfied the terms of the contract with QBE and/or CAU, and  
8 have done everything they are required to do under the insurance policy.

9 100. RICHARD and JUSTIN have satisfied the terms of the employment agreement with  
10 SUNRISE and have done everything they are required to do in their role as employees to  
11 receive defense and indemnification under the subject insurance policy.  
12

13 101. That the conduct of QBE and/or CAU, in refusing to defend RICHARD and JUSTIN for the  
14 action brought by RUSSO, constituted a breach of the duty to defend.

15 102. The conduct of QBE and/or CAU, alleged in the foregoing paragraphs, constitutes a breach  
16 of the insurance contract.

17 103. As a result of the breach by QBE, CAU and SUNRISE, and each of them, of the contract,  
18 Judgment has been entered against RICHARD and JUSTIN in the amount of \$25,000,000.00  
19 with statutory interest accruing thereon.  
20

21 104. That RICHARD and JUSTIN have been required to obtain the services of an attorney to  
22 prosecute this claim and is therefore entitled to their costs and reasonable attorney's fees  
23 incurred.

24 105. QBE, CAU and SUNRISE, and each of them, breached their contract(s) with a conscious  
25 disregard for the rights and harms these actions would have on RICHARD and JUSTIN,  
26 which rises to the level of oppression, fraud, or malice, and which subjected RICHARD and  
27 JUSTIN to cruel and unjust hardship. RICHARD and JUSTIN are therefore entitled to  
28

1 punitive damages against QBE, CAU and SUNRISE, and each of them, in an amount in  
2 excess of Fifteen Thousand Dollars (\$15,000.00).

### 3 SECOND CAUSE OF ACTION

#### 4 (Breach of Fiduciary Duty – All Counterdefendants)

5  
6 106. RICHARD and JUSTIN reallege and reassert each and every statement and allegation  
7 contained in the preceding paragraphs as though set forth fully hereunder.

8 107. The expressed and/or implied agreement between QBE and/or CAU and RICHARD and  
9 JUSTIN, carries with it a fiduciary duty.

10 108. The contract of insurance as alleged herein carries with it a fiduciary duty.

11 109. QBE and/or CAU have breached their fiduciary duty by the acts and omissions alleged  
12 herein.

13  
14 110. That as a direct and proximate result of the aforesaid breach of fiduciary duty on the part of  
15 QBE and/or CAU, RICHARD and JUSTIN have been damaged, and are entitled to punitive  
16 damages, in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

17 111. QBE, CAU and SUNRISE, and each of them, violated their fiduciary duties with a conscious  
18 disregard for the rights of RICHARD and JUSTIN, which rises to the level of oppression,  
19 fraud, and/or malice, and which subjected RICHARD and JUSTIN to cruel and unjust  
20 hardship. RICHARD and JUSTIN are therefore entitled to punitive damages against QBE,  
21 CAU and SUNRISE, and each of them, in an amount in excess of Fifteen Thousand Dollars  
22 (\$15,000.00).  
23

### 24 THIRD CAUSE OF ACTION

#### 25 (Negligence – All Counterdefendants)

26  
27 112. RICHARD and JUSTIN reallege and reassert each and every statement and allegation  
28 contained in the preceding paragraphs as though set forth fully hereunder.

1 113. SUNRISE had a duty to ensure, that their employees RICHARD and JUSTIN, were provided  
2 the rights inherent in their employment, which included the right to a defense and  
3 indemnification through SUNRISE's insurance.

4 114. SUNRISE was negligent in alerting QBE and/or CAU that RICHARD and JUSTIN were  
5 employed and/or failed to follow up to ensure RICHARD and JUSTIN were properly  
6 defended and/or indemnified by QBE and/or CAU, and/or SUNRISE did properly inform  
7 QBE and/or CAU of RICHARD's and JUSTIN's employment with SUNRISE, but QBE  
8 and/or CAU nevertheless refused to defend RICHARD and JUSTIN.

10 115. QBE and/or CAU had documentation in their possession and/or available to them  
11 demonstrating that RICHARD and JUSTIN were employees of SUNRISE, but QBE and/or  
12 CAU neglected its duty and failed to investigate, even after RUSSO's counsel specifically  
13 informed QBE and/or CAU that it had defaulted RICHARD and JUSTIN in the  
14 UNDERLYING MATTER. QBE's and/or CAU's negligent failure to investigate resulted in  
15 damages to RICHARD and JUSTIN.

17 116. That as a direct, legal, and proximate result of the aforesaid negligence of QBE, CAU and  
18 SUNRISE, and each of them, RICHARD and JUSTIN have been damaged, and are entitled  
19 to damages, in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

21 117. QBE, CAU and SUNRISE, and each of them, grossly neglected their duties toward  
22 RICHARD and JUSTIN, with a conscious disregard for the rights of RICHARD and  
23 JUSTIN, which rises to the level of oppression, fraud, and/or implied malice, and which  
24 subjected RICHARD and JUSTIN to cruel and unjust hardship. RICHARD and JUSTIN are  
25 therefore entitled to punitive damages against QBE, CAU and SUNRISE, and each of them,  
26 in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

28 ///

**FORTH CAUSE OF ACTION****(Bad Faith – Counterdefendants QBE)**

118. RICHARD and JUSTIN reallege and reassert each and every statement and allegation contained in the preceding paragraphs as though set forth fully hereunder.

119. That at all times pertinent hereto, QBE and/or CAU undertook to provide insurance coverage, defense, and indemnity of SUNRISE, giving the reasonable and foreseeable expectation to RICHARD and JUSTIN that they were and would be covered, defended, and/or indemnified with respect to the claims and actions against them, but then unilaterally and unreasonably denied coverage, defense, and indemnification to RICHARD and JUSTIN.

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

1 121. QBE and/or CAU denied the benefits owed with a conscious disregard for the rights of  
2 RICHARD and JUSTIN, which rises to the level of oppression, fraud, or malice, and which  
3 subjected RICHARD and JUSTIN to cruel and unjust hardship. RICHARD and JUSTIN are  
4 therefore entitled to punitive damages against QBE and/or CAU in an amount in excess of  
5 Fifteen Thousand Dollars (\$15,000.00).  
6

7 **FIFTH CAUSE OF ACTION**

8 **(Unfair Claims Practices – QBE Counterdefendants)**

9 122. RICHARD and JUSTIN reallege and reassert each and every statement and allegation  
10 contained in the preceding paragraphs as though set forth fully hereunder.

11 123. QBE's and/or CAU's actions were indecent and in violation of general fair claims practices.  
12 Moreover, QBE's and/or CAU's actions were specifically in violation of the provisions of  
13 the Unfair Claims Practices Act (N.R.S. 686A.310 et seq.), violation of which was done with  
14 QBE's and/or CAU's actual, constructive and/or implied knowledge.  
15

16 124. Pursuant to N.R.S. 686A.310(2), QBE and/or CAU are liable for any damages sustained by  
17 RICHARD and/or JUSTIN, as a result of QBE's and/or CAU's violations of the unfair  
18 claims practices, including, but not limited to, damages for benefits denied under the  
19 insurance policy(ies), consequential damages, emotional distress, and attorneys' fees, in an  
20 amount in excess of Fifteen Thousand Dollars (\$15,000.00).  
21

22 125. QBE and/or CAU denied the benefits owed with a conscious disregard for the rights of  
23 RICHARD and JUSTIN, which rises to the level of oppression, fraud, or malice, and which  
24 subjected RICHARD and JUSTIN to cruel and unjust hardship. RICHARD and JUSTIN are  
25 therefore entitled to punitive damages against QBE and/or CAU in an amount in excess of  
26 Fifteen Thousand Dollars (\$15,000.00).  
27

28 ///

**SIXTH CAUSE OF ACTION****(Civil Conspiracy and Fraud – All Defendants)**

126. RICHARD and JUSTIN reallege and reassert each and every statement and allegation contained in the preceding paragraphs as though set forth fully hereunder.

127. At the time of settlement and the stipulation and order in the UNDERLYING MATTER, which was between RUSSO and QBE, CAU and SUNRISE in this matter, SUNRISE had specific knowledge that RICHARD and JUSTIN, at all relevant times, were SUNRISE employees. SUNRISE was aware that RICHARD and JUSTIN were provided W-2s for taxes rather than 1099s, that RICHARD and JUSTIN qualified as employees under the terms of the insurance contract with QBE and/or CAU, as well as under employment law standards, and that in all of SUNRISE's written documentation, RICHARD and JUSTIN were referred to as employees (*not independent contractors*). On the other hand, SUNRISE had absolutely no information or evidence suggesting that RICHARD or JUSTIN were independent contractors or that they should not be covered under SUNRISE's insurance policy with QBE and/or CAU.

128. At the time of settlement and the stipulation and order in the UNDERLYING MATTER, which was between RUSSO and QBE, CAU and SUNRISE, in this matter, QBE and/or CAU received documentation through SUNRISE and their joint attorneys at Springel & Fink, which combined to demonstrate that RICHARD and JUSTIN were SUNRISE employees at all relevant times. Moreover, at no point did QBE and/or CAU have any reasonable basis to believe RICHARD or JUSTIN were independent contractors or anything less than covered employees under QBE's and/or CAU's policy.

129. Nevertheless, with knowledge that RICHARD and JUSTIN were, in fact, SUNRISE employees at all relevant times, QBE, CAU and SUNRISE, and each of them, acted to

1 deceive RUSSO, and the Court in the UNDERLYING MATTER, into believing that  
2 RICHARD and JUSTIN were merely independent contractors and not employees at all.  
3 These efforts were for the calculated purpose of creating reliance by RUSSO and the Court,  
4 which sought to result in terrible harm to RICHARD and JUSTIN, including a loss of  
5 employment rights and insurance coverage, including defense and indemnity for negligence  
6 that RICHARD and JUSTIN may have engaged in while under SUNRISE's employment.  
7

8 130. That the desired result was in fact achieved by QBE, CAU and SUNRISE, and each of them,  
9 as SUNRISE successfully withheld its obligations as RICHARD's and JUSTIN's employer,  
10 and QBE and/or CAU successfully withheld a defense and indemnity, resulting in a  
11 \$25,000,000.00 judgment against RICHARD and JUSTIN, that QBE, CAU and SUNRISE,  
12 and each of them, are still claiming is owed by RICHARD and JUSTIN only.  
13

14 131. QBE, CAU and SUNRISE, and each of them, willfully attempted to strip RICHARD and  
15 JUSTIN of their rights as employees and coverage as insureds in the UNDERLYING  
16 MATTER. This conspiratorial effort between QBE and/or CAU and that of SUNRISE, is  
17 evident from their combined efforts to convince RUSSO, though counsel, to stipulate that  
18 RICHARD and JUSTIN were independent contractors in their joint settlement agreement,  
19 even though QBE, CAU and SUNRISE, and each of them, all knew, and had documentation  
20 available to them, that showed RICHARD and JUSTIN were W-2 employees acting in the  
21 course and scope of their employment with SUNRISE, at all relevant times in this matter.  
22 That with actual malice and with a conscious disregard for the welfare of RICHARD and  
23 JUSTIN, QBE, CAU and SUNRISE, and each of them, fraudulently attempted to destroy  
24 employment rights so that SUNRISE would bear no responsibility for negligence and so that  
25 QBE and/or CAU would bear no responsibility to defend and/or indemnify.  
26  
27

28 ///

1 132. Moreover, QBE, CAU and SUNRISE, and each of them, seeking to entirely avoid their  
2 responsibilities and duties respecting RICHARD and JUSTIN through their settlement  
3 agreement, agreed that any settlement would specifically exclude RICHARD and JUSTIN,  
4 and anyone associated or affiliated with them. The settlement release included SUNRISE  
5 employees, except for RICHARD and JUSTIN, or anyone associated or affiliated with them.  
6 The settlement release also specifically stated that, “Nothing in this release shall release,  
7 discharge, or in any way impact [RUSSO’s] rights against RICHARD DUSLAK and/or  
8 JUSTIN SESMAN in any manner,” thereby leaving RICHARD and JUSTIN without  
9 protection in the underlying settlement.  
10

11 133. Furthermore, the release stated that any language in the release that could be read to, in any  
12 way, impact the rights of RICHARD and JUSTIN against any entity (including QBE and/or  
13 CAU, or any other insurer) “SHALL BE DEEMED NULL AND VOID.” Nevertheless, QBE  
14 has now refused to abide by its agreement and has sought to further destroy the rights of  
15 RICHARD and JUSTIN, by bringing this action long after judgment was entered against  
16 RICHARD and JUSTIN. It is evident that QBE now seeks to specifically enforce part of the  
17 language in an agreement—to which RICHARD and JUSTIN were not parties—even though  
18 the language QBE seeks to enforce is specifically stricken since it “SHALL BE DEEMED  
19 NULL AND VOID” to the degree it impacts the rights of RICHARD and JUSTIN.  
20

21 134. As such, QBE, CAU and SUNRISE, and each of them, first rejected and refused to abide by  
22 their duties and contractual obligations toward RICHARD and JUSTIN, and instead acted  
23 with malice and in bad faith, with respect to RICHARD and JUSTIN, by knowingly  
24 withholding the rights and protections they were legally and duty-bound to provide to  
25 RICHARD and JUSTIN. SUNRISE breached its employment agreement and expected  
26 protections as RICHARD’s and JUSTIN’s employer. QBE and/or CAU breached its  
27  
28



1 insurance contract and its duty to act in good faith as RICHARD's and JUSTIN's insurer.  
2 Then, after these clear breaches of contract and bad faith actions and omissions, QBE now  
3 seek to destroy RICHARD's and JUSTIN's ongoing rights to protect themselves now that  
4 QBE, CAU and SUNRISE, and each of them, have saddled RICHARD and JUSTIN with a  
5 judgment, which should have been defended against and ultimately paid by QBE, CAU and  
6 SUNRISE, and each of them.  
7

8 135. Because QBE, CAU and SUNRISE, and each of them, breached their contracts and acted in  
9 bad faith toward RICHARD and JUSTIN, in these identified instances, and upon information  
10 and belief in many other instances, RICHARD and JUSTIN were defaulted with a massive  
11 judgment in the UNDERLYING MATTER, and RICHARD and JUSTIN are now forced to  
12 retain an attorney to defend themselves and to prosecute this matter.  
13

14 136. Although in their relationship with QBE, CAU and SUNRISE, and each of them, RICHARD  
15 and JUSTIN are clearly the aggrieved parties that have been sorely mistreated by QBE, CAU  
16 and SUNRISE, and each of them, it is now QBE that has added insult to injury, by suing  
17 RICHARD and JUSTIN, to strip them further of their rights.  
18

19 137. Furthermore, QBE, CAU and SUNRISE, and each of them, were aware of the tortuous nature  
20 of their fraud, and conspired with each other to achieve their tortuous purposes.

21 138. RICHARD and JUSTIN have been seriously harmed by QBE, CAU and SUNRISE, and each  
22 of them, fraud and conspiracy, resulting in monetary damages in excess of Fifteen Thousand  
23 Dollars (\$15,000.00).

24 139. Moreover, QBE's, CAU's and SUNRISE's, and each of their, actions were malicious and  
25 worthy of punitive or exemplary damages.  
26

27 **WHEREFORE**, RICHARD and JUSTIN pray for judgment against QBE, CAU and  
28 SUNRISE, and each of them, as follows:

**ON ALL CAUSES OF ACTION**

1. General damages in an amount in excess of \$25,000,000.00;
2. For general damages in an amount in excess of \$15,000.00;
3. For consequential damages in an amount in excess of \$15,000.00;
4. For special damages in an amount to be determined at trial;
5. For punitive damages in an amount to be determined at time of trial;
6. For declaratory and equitable relief as pled and as the court sees fit in the premises;
7. Costs of this suit;
8. Attorney's fees; and
9. For such other and further relief as to the Court may seem just and proper in the premises.

DATED this 4th day of January, 2021.

**BIGHORN LAW**

By: /s/ Kimball Jones  
**KIMBALL JONES, ESQ.**  
Nevada Bar No.: 12982  
**EVAN K. SIMONSEN, ESQ.**  
Nevada Bar No.: 13762  
2225 E. Flamingo Rd.  
Building 2, Suite 300  
Las Vegas, Nevada 89119  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

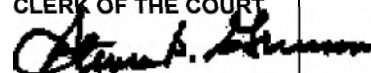
Pursuant to F.R.C.P. 5, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 4th day of January, 2021, I served the foregoing ***ANSWER, COUNTERCLAIM AND THIRD-PARTY COMPLAINT*** as follows:

☒ Electronic Service – By serving a copy thereof through the Court’s electronic service system, and/or

☐ U.S. Mail – By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below:

Ramiro Morales, Esq.  
MORALES, FIERRO & REEVES  
600 South Tonopah Drive, Suite 300  
Las Vegas, Nevada 89106  
*Attorneys for Plaintiff,*  
***QBE INSURANCE CORPORATION***

/s/ Erickson Finch  
An employee/agent of **BIGHORN LAW**



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

11 Attorneys for Intervenor  
12 QBE Insurance Corporation

13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 SIMONE RUSSO,	)	Case No.: A753606
16	)	Dept: XVI
17 Plaintiff,	)	
18	)	JOINDER TO MOTION TO SET ASIDE
19 vs.	)	AND/OR AMEND JUDGMENT
20	)	
21 COX COMMUNICATIONS LAS VEGAS,	)	<b>HEARING REQUESTED</b>
22 INC., et al.	)	
23	)	
24 Defendants.	)	

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

26 BE ADVISED THAT Intervenor QBE Insurance Corporation ("QBE") hereby joins in the  
27 Motion to Set Aside And/Or Amend Judgment ("Motion") filed by Defendant Sunrise Villas IX  
28 Homeowners Association ("HOA").

As reflected in the Motion, Plaintiff Simone Russo ("Russo"), proposed the following in  
open Court on November 7, 2019:

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

Motion, Exhibit 4, 37:13-15.

Per this proposal, the parties then had 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

1           may take care of all of this. I would just need to run that by my  
2           people. But that may take care of all of our concerns at that point, and  
3           then we can -- we can be done.

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

4           MR. SAMPSON: It was my suggestion, so I still totally agree with it.  
5           Motion, Exhibit 4, 40:4-14.

6           This exchange led to the following stipulation that counsel for Russo executed:

7           IT IS HEREBY STIPULATED THAT FOR THE PURPOSES OF  
8           THIS LITIGATION AND FOR ANY AND ALL ISSUES  
9           RELATED TO SIMONE RUSSO'S CLAIMS AND SETTLEMENT,  
10          THAT IN AUGUST 2016 BOTH DEFENDANT RICHARD  
11          DUSLAK AND DEFENDANT JUSTIN SESMAN WERE  
12          NATURAL PERSONS WHO WERE IN THE SERVICE OF  
13          SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AS  
14          INDEPENDENT CONTRACTORS, WHOM SUNRISE VILLAS IX  
15          HOMEOWNERS ASSOCIATION COMPENSATED WITH  
16          WAGES, AND WHOM SUNRISE VILLAS IX HOMEOWNERS  
17          ASSOCIATION HAD THE RIGHT TO DIRECT AND CONTROL  
18          WHILE DUSLAK AND SESMAN PERFORMED SERVICES FOR  
19          SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION...

14          Exhibit 5, p 4.

15          As reflected in the Opposition Russo filed as to QBE's separate Motion To Enforce  
16          Settlement, counsel for Russo now seeks to disavow himself from the stipulation by baldly  
17          contending that the judgment entered in this matter is based on liability Duslak and Sesman face as  
18          former employees of the HOA. See also First Amended Complaint filed in *QBE v. Russo*, United  
19          States District Court, District of Nevada Case No.: 2:20-cv-02104-RFB-EJY ("Coverage Action"), a  
20          copy of which is attached hereto as Exhibit A, ¶ 14; Answer filed by Russo, a copy of which is  
21          attached hereto as Exhibit B, ¶ 14. As Russo's position violates the release agreement agreed to by  
22          all parties (including Russo), the judgment is void.

23          Alternatively, in light of the release agreed to by all parties (including Russo), the judgment  
24          is properly amended to reflect that the liability of Duslak and Sesman is limited to their conduct as  
25          independent contractors and not employees of Sunrise HOA.<sup>1</sup> While practical considerations exist

26          \_\_\_\_\_  
27          <sup>1</sup> No record exists as to the basis for the judgment. Motion, Exhibits 8, 9. Given this, inquiries have been made to  
28          counsel for Russo as to the nature and extent of the evidence presented to this Court to warrant and support the  
29          judgment. As counsel has inexplicably failed to provide any documentation he relied upon to obtain the judgment, no  
30          ability exists to ascertain and confirm the basis for the judgment, which is problematic.

as to as whether the judgment can be legitimately amended given the positions of Russo, Duslak and Sesman that the latter two only acted as HOA employees and never as independent contractors, the judgment nonetheless should be amended (if able) given that the release only permits for Russo to proceed against Duslak and Sesman on a limited basis (to the extent he can now make a prima facie showing that Duslak and Sesman acted as independent contractors in contravention of pleadings filed in the Coverage Action).<sup>2</sup>

As QBE has a direct and pecuniary interest in the Motion given that it funded the settlement reached on behalf of the HOA in this matter coupled with the assertions Duslak and Sesman have made in the Coverage Action, it joins with the HOA in requesting that the Motion be granted.

Dated: January 22, 2021

MORALES FIERRO & REEVES

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

Supporting Declaration

I, William Reeves, declare as follows:

1. I am an attorney with Morales Fierro & Reeves, counsel for QBE.
2. The factual information contained herein is true and correct based on my own personal knowledge.
3. Attached hereto as Exhibit A is a true and correct copy of QBE's First Amended Complaint ("FAC") filed in the Coverage Action.

<sup>2</sup> Counsel for Duslak and Sesman has been made aware of the efforts to set aside the judgment and invited to join in the Motion or separately seek relief. While Duslak and Sesman should be motivated to set aside the judgment entered against them, counsel, to date, has shown little interest, possibly suggesting an alternate agenda.

1           4.       Attached hereto as Exhibit B is a true and correct copy of the operative Answer  
2 Russo filed in the Coverage Litigation.

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

4 Executed in Concord, California on the date specified below.

5 Dated: January 22, 2021

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