

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION,

Appellant,

vs.

SIMONE RUSSO,

Respondent.

Case No. 83115 Electronically Filed
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APPELLANT'S APPENDIX
VOLUME 9

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90.	Notice of Entry	4/22/21	12	2652-2654
	<u>Exhibit 1</u> : Order on Motion to Substitute		12	2655-2660
91.	Minute Order: Pending Motions	5/3/21	12	2661-2662
92.	Motion to Amend and/or Modify Order	5/7/21	12	2663-2668
	<u>Exhibit A</u> : Minute Order for March 31, 2021		12	2669-2671
	<u>Exhibit B</u> : April 1, 2021 Email Correspondence		12	2672-2675

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(Cont. 92)	<u>Exhibit C</u> : April 5, 2021 Email Correspondence		12	2676-2678
	<u>Exhibit D</u> : April 5, 2021 Email Correspondence with a redline version of the Order		12	2679-2687
	<u>Exhibit E</u> : April 22, 2021 Email Correspondence		12	2688-2698
	<u>Exhibit F</u> : Order on Motion to Intervene to Enforce Settlement [April 22, 2021]		12	2699-2711
	<u>Exhibit G</u> : Proposed Order Re: Motion to Intervene to Enforce Settlement, clean version of the redlined Order (Ex. D)		12	2712-2717
93.	Defendant Sunrise Villas IX Homeowners Association's Joinder to Intervenor QBE Insurance Corporation's Motion to Amend and/or Modify Order	5/10/21	12	2718-2720
94.	Opposition to Motion to Amend and/or Modify Order	5/13/21	13	2721-2731
	<u>Exhibit 1</u> : Minute Order for March 31, 2021		13	2732-2734
	<u>Exhibit 2</u> : April 1, 2021 Email Correspondence from Russo's Counsel re proposed Order		13	2735-2736
	<u>Exhibit 3</u> : Order on Motion to Intervene to Enforce Settlement		13	2737-2742
	<u>Exhibit 4</u> : April 1, 2021 Email Correspondence from QBE's Counsel re Order in Word format		13	2743-2746
	<u>Exhibit 5</u> : April 1, 2021 Email Correspondence from Sunrise's Counsel re Order		13	2747-2749
	<u>Exhibit 6</u> : April 5, 2021 Email Correspondence from Russo's Counsel circulating proposed Order		13	2450-2751

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(Cont. 94)	<u>Exhibit 7</u> : Order on Motion to Intervene to Enforce Settlement		13	2752-2760
	<u>Exhibit 8</u> : April 5, 2021 Email Correspondence from QBE's Counsel re suggested changes to Order		13	2761-2763
	<u>Exhibit 9</u> : April 22, 2021 Email Correspondence from Sunrise's Counsel re "extraneous" facts included in the Order		13	2764-2780
95.	Supplement to Opposition to Motion to Amend and/or Modify Order	5/18/21	13	2781-2784
96.	Defendant Sunrise Villas IX Homeowners Association's Notice of Submission of Competing Order on Defendant's Motion to Set Aside and/or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement	5/25/21	13	2785-2787
	<u>Exhibit 1</u> : Proposed competing order for Order on Defendant's Motion to Set Aside and/or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement submitted to the Court for consideration		13	2788-2802
	<u>Exhibit 2</u> : Order on Defendants Motion to Set Aside and/or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement		13	2803-2816
97.	Order on Defendant's Motion to Set Aside and/or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement [Denying]	5/26/21	13	2817-2835
98.	Notice of Entry	5/26/21	13	2836-2838

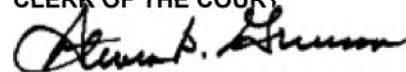
<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 98)	Order Defendant's Motion to Set Aside and/or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement [Denying] [May 26, 2021]		13	2839-2857
99.	Defendant Sunrise Villas IX Homeowners Association's Motion to Release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

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

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

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

Electronically Filed
2/22/2021 10:33 AM
Steven D. Grierson
CLERK OF THE COURT


SUPP

DAVID F. SAMPSON, ESQ.
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON, LLC.
630 S. 3rd Street
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Fax: 888-209-4199
Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,)

Plaintiff,)

vs.)

CASE NO: A-17-753606-C

DEPT. NO: XVI

COX COMMUNICATIONS LAS VEGAS,)

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

IES RESIDENTIAL, INC., SUNRISE)

VILLAS IX HOMEOWNERS)

ASSOCIATION, J & G LAWN)

MAINTENANCE, KEVIN BUSHBAKER,)

PWJAMES MANAGEMENT &)

CONSULTING, LLC., J. CHRIS)

SCARCELLI, DOE LANDSCAPER,)

RICHARD DUSLAK, JUSTIN SESMAN,)

AND DOES I-V, and ROE)

CORPORATIONS I-V, inclusive,)

Defendants.)

SECOND SUPPLEMENT TO
OPPOSITION TO MOTION TO SET
ASIDE AND/OR AMEND JUDGMENT

**SECOND SUPPLEMENT TO OPPOSITION TO MOTION TO SET ASIDE AND/OR
AMEND JUDGMENT**

Plaintiff, SIMONE RUSSO, supplements his opposition to SUNRISE's motion and QBE's joinder¹ to the motion to set aside and/or amend the judgment that was duly entered in

¹ As of the filing of this opposition QBE is not a party to this action. QBE filed a motion to intervene over a year after judgment was entered in this matter, which motion has not yet been

this matter on December 17, 2019, and for which Notice of Entry of the said Judgment was served December 17, 2019.

One of the major issues in this matter is SUNRISE's multiple representations to the court that DUSLAK and SESMAN were not SUNRISE employees, and that they were instead independent contractors. It is therefore crucial the court be made aware of documents that have recently been disclosed in the federal declaratory relief action which clearly establish SUNRISE's representations to the court in this matter were incorrect. First of all, RICHARD DUSLAK has provided the federal court with a signed declaration under penalty of perjury, and has asserted the following:

1. My name is Richard Duslak.
2. I was employed by SUNRISE VILLAS HOMEOWNERS ASSOCIATION (Sunrise) on August 27, 2016 and for some period of time prior to that date.
3. While I was employed by Sunrise, the work projects I was given were assigned to me by the Sunrise Board and my work was in the service of Sunrise. The Sunrise Board controlled the projects I would work on and directed me as to the work that was to be completed. A member of the Sunrise Board would often direct me in the specific manner that the work must be completed.
4. That while I was employed by Sunrise, my pay was a set hourly rate and paid directly to me by Sunrise. There was no opportunity to earn a higher rate of pay above that which was established by the Board.
5. I had a regular daily work schedule that was set by the Board. My normal work day would begin at 8:00 A.M. and would end at 5:00 P.M., with a one-hour lunch break.
6. The tools and equipment I used to complete my assignments at Sunrise were paid for and owned by Sunrise. I was not responsible for purchasing my own equipment.
7. I had no special training or education in general landscaping or maintenance for the work that I did at Sunrise other than prior work experience in the field and a one-week course to certify as a swimming pool operator.

ruled on and should be denied as a party is not permitted to intervene after judgment is entered as required in *Nalder v. Eighth Judicial Dist. Ct.*, 136 Nev.Adv.Op. 24 (2020). The joinder, as well as any other documents filed by QBE in this matter, are improper and represent rogue pleadings which the Court should disregard.

8. I was not free to contract to do side projects for homeowners for more pay. I was only permitted to perform work decided upon by the Board.

9. I was never required to obtain or maintain a business license in order to perform my duties.

See, Exhibit “1”.

The testimony from Mr. Duslak’s affidavit flies in the face of SUNRISE’s repeated claims to this court that DUSLAK and SESMAN were independent contractors.

Additionally, SUNRISE has recently disclosed a portion of the payroll records for DUSLAK and SESMAN. *See*, Exhibit “2”. ***The payroll records make it more than clear that SUNRISE was well aware of the fact that DUSLAK and SESMAN were SUNRISE employees up through and including October 2016.*** The payroll records identify DUSLAK and SESMAN as “employees”. *Id.* The records discuss pay dates from pay periods throughout 2015 and 2016, which records are categorized ,“By Location By Employee Name.” *Id.*

The payroll records further establish that SUNRISE withdrew funds from the paychecks of DUSLAK and SESMAN for “FICA- Medicare”, “FICA- OADSI”, “MEDICARE- EMPLOYER”, “OASDI- EMPLOYER”, and “FEDERAL UNEMPLOYMENT”. *Id.* The records provide DUSLAK and SESMAN with “Employee ID” numbers, and also indicate SUNRISE removed funds from each paycheck for “worker’s compensation”. *Id.*

The payroll records make it abundantly clear that the representations SUNRISE made to this court regarding DUSLAK and SESMAN being independent contractors were completely false. What is worse is that the records make it clear that ***when SUNRISE represented to the court that DUSLAK and SESMAN were not employees SUNRISE knew, at the time the representations were made, that the representations were false.***

SUNRISE even went so far as to provide this court with an affidavit from the HOA management company that falsely asserted that DUSLAK and SESMAN were independent contractors. *See*, Exhibit “3”. The payroll records from 2015 and 2016 make it more than clear that SUNRISE and its HOA management company knew DUSLAK and SESMAN were SUNRISE employees. The affidavit from August 6, 2018 was made with SUNRISE and its management company’s full knowledge that DUSLAK and SESMAN were in fact employees.

While NRCP 60(b)(3) permits relief from a judgment for fraud by an opposing party, SUNRISE cannot utilize NRCP 60(b)(3) to obtain relief from the judgment based on its own fraud in claiming DUSLAK and SESMAN were independent contractors when SUNRISE was well aware at the time that DUSLAK and SESMAN were SUNRISE’s employees. In any event, relief under NRCP 60(b)(3) must be sought within 6 months of notice of entry of judgment being filed. The instant motion was filed well over a year after notice of entry was filed.

SUNRISE cannot be permitted to benefit from its misrepresentations to the Plaintiff and to this court in this matter. As noted previously, in reaching a settlement in this matter SIMONE released SUNRISE “EXCLUDING RICHARD DUSLAK and/or JUSTIN SESMAN”, and released Defendants’ “employees EXCLUDING RICHARD DUSLAK and/or JUSTIN SESMAN”. SIMONE specifically retained all of his rights against DUSLAK and SESMAN, and thereafter procured a default judgment against DUSLAK and SESMAN as neither ever appeared in this lawsuit. There is no cause to amend or set the duly entered Judgment aside a year after Judgment was entered.

///

///

///

CONCLUSION

For the foregoing reasons SUNRISE's motion should be denied.

DATED this 19th day of February, 2021.

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ *David Sampson*

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Fax No: 888-209-4199

Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, LLC., and that on this 22nd day of February, 2021, I served a copy of the foregoing **SUPPLEMENT** on all the remaining parties in this matter via the court's electronic online filing system and as follows:

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

LEONARD FINK, ESQ.
9075 W. Diablo Dr. Suite 302
Las Vegas NV 89148
Counsel for SUNRISE

And

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

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

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

EXHIBIT “1”

DECLARATION OF RICHARD DUSLAK

I, under penalty of perjury under the laws of the State of Nevada, declare the following is true and correct:

1. My name is Richard Duslak.
2. I was employed by SUNRISE VILLAS HOMEOWNERS ASSOCIATION (Sunrise) on August 27, 2016 and for some period of time prior to that date.
3. While I was employed by Sunrise, the work projects I was given were assigned to me by the Sunrise Board and my work was in the service of Sunrise. The Sunrise Board controlled the projects I would work on and directed me as to the work that was to be completed. A member of the Sunrise Board would often direct me in the specific manner that the work must be completed.
4. That while I was employed by Sunrise, my pay was a set hourly rate and paid directly to me by Sunrise. There was no opportunity to earn a higher rate of pay above that which was established by the Board.
5. I had a regular daily work schedule that was set by the Board. My normal work day would begin at 8:00 A.M. and would end at 5:00 P.M., with a one-hour lunch break.
6. The tools and equipment I used to complete my assignments at Sunrise were paid for and owned by Sunrise. I was not responsible for purchasing my own equipment.
7. I had no special training or education in general landscaping or maintenance for the work that I did at Sunrise other than prior work experience in the field and a one-week course to certify as a swimming pool operator.
8. I was not free to contract to do side projects for homeowners for more pay. I was only permitted to perform work decided upon by the Board.
9. I was never required to obtain or maintain a business license in order to perform my duties.

This Declaration is made in good faith, and not for the purposes of delay.

FURTHER DECLARANT SAYETH NAUGHT.



Signature



Date

EXHIBIT “2”



ZZ PW James Management & Consulting, LLC
Payroll Check Journal Report
Pay Dates From 12/01/2015 To 10/31/2016 By Location By Employee Name

Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX DUSLAK RICHARD Pay Method HOURLY Chk/Deposit Check Check Number 181688 Check Date 12-31-2015 Period Start 12-13-2015 Period End 12-26-2015 WkComp Class NV9014 Employee ID K37117 Net Pay \$1292.90		REGULAR PAY	80.00	17.5000	1,400.00	FICA - MEDICARE FICA - OASDI Deduction Total:	20.30 86.80 107.10	ADMIN FEE MEDICARE - EMPLOYER OASDI - EMPLOYER FEDERAL UNEMPLOYMENT NV SUTA NEVADA SUI BOND INT ASSESSMENT NV MODIFIED BUS TAX W/C 9014 Contribution Total:	41.54 20.30 86.80 8.40 50.40 11.20 20.65 38.92 278.21
		OVERTIME	27.00	26.2500	708.75	FICA - MEDICARE FICA - OASDI Deduction Total:	10.28 43.94 54.22	ADMIN FEE MEDICARE - EMPLOYER OASDI - EMPLOYER FEDERAL UNEMPLOYMENT NV SUTA NEVADA SUI BOND INT ASSESSMENT NV MODIFIED BUS TAX W/C 9014 Contribution Total:	41.54 10.28 43.94 4.25 25.52 5.67 10.45 19.70 161.35



ZZ PW James Management & Consulting, LLC
Payroll Check Journal Report

Pay Dates From 12/01/2015 To 10/31/2016 By Location By Employee Name

Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX		HOLIDAY	8.00	17.5000	140.00	FICA – MEDICARE	21.06	ADMIN FEE	41.54
DUSLAK RICHARD		REGULAR PAY	75.00	17.5000	1,312.50	FICA – OASDI	90.06	MEDICARE – EMPLOYER	21.06
Pay Method	HOURLY	Pay Total:	83.00	17.5000	1,452.50	Deduction Total:	111.12	OASDI – EMPLOYER	90.06
Chk/Deposit	Deposit							FEDERAL UNEMPLOYMENT	8.72
Check Number	621850							NV SUTA	52.29
Check Date	01–15–2016							NEVADA SUI BOND INT ASSESSMENT	11.62
Period Start	12–27–2015							NV MODIFIED BUS TAX	21.42
Period End	01–09–2016							W/C 9014	40.38
WkComp Class	NV9014							Contribution Total:	287.09
Employee ID	K37117								
Net Pay	\$1341.38								
SUNRISE VILLAS IX		REGULAR PAY	80.00	17.5000	1,400.00	FICA – MEDICARE	20.30	ADMIN FEE	41.54
DUSLAK RICHARD						FICA – OASDI	86.80	MEDICARE – EMPLOYER	20.30
Pay Method	HOURLY					Deduction Total:	107.10	OASDI – EMPLOYER	86.80
Chk/Deposit	Deposit							FEDERAL UNEMPLOYMENT	8.40
Check Number	626222							NV SUTA	50.40
Check Date	01–29–2016							NEVADA SUI BOND INT ASSESSMENT	11.20
Period Start	01–10–2016							NV MODIFIED BUS TAX	20.65
Period End	01–23–2016							W/C 9014	38.92
WkComp Class	NV9014							Contribution Total:	278.21
Employee ID	K37117								
Net Pay	\$1292.90								



ZZ PW James Management & Consulting, LLC
Payroll Check Journal Report
Pay Dates From 12/01/2015 To 10/31/2016 By Location By Employee Name

Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX		REGULAR PAY	76.00	17.5000	1,330.00	FICA – MEDICARE	19.28	ADMIN FEE	41.54
DUSLAK RICHARD						FICA – OASDI	82.46	MEDICARE – EMPLOYER	19.28
Pay Method HOURLY						Deduction Total:	101.74	OASDI – EMPLOYER	82.46
Chk/Deposit Deposit								FEDERAL UNEMPLOYMENT	7.98
Check Number 630997								NV SUTA	47.88
Check Date 02–12–2016								NEVADA SUI BOND INT ASSESSMENT	10.64
Period Start 01–24–2016								NV MODIFIED BUS TAX	19.62
Period End 02–06–2016								W/C 9014	36.97
WkComp Class NV9014								Contribution Total:	266.37
Employee ID K37117									
Net Pay \$1228.26									
SUNRISE VILLAS IX		REGULAR PAY	80.00	17.5000	1,400.00	FICA – MEDICARE	20.30	ADMIN FEE	41.54
DUSLAK RICHARD						FICA – OASDI	86.80	MEDICARE – EMPLOYER	20.30
Pay Method HOURLY						Deduction Total:	107.10	OASDI – EMPLOYER	86.80
Chk/Deposit Deposit								FEDERAL UNEMPLOYMENT	8.40
Check Number 634843								NV SUTA	50.40
Check Date 02–26–2016								NEVADA SUI BOND INT ASSESSMENT	11.20
Period Start 02–07–2016								NV MODIFIED BUS TAX	20.65
Period End 02–20–2016								W/C 9014	38.92
WkComp Class NV9014								Contribution Total:	278.21
Employee ID K37117									
Net Pay \$1292.90									



ZZ PW James Management & Consulting, LLC
Payroll Check Journal Report
Pay Dates From 12/01/2015 To 10/31/2016 By Location By Employee Name

Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX		REGULAR PAY	80.00	17.5000	1,400.00	FICA – MEDICARE	20.30	ADMIN FEE	41.54
DUSLAK RICHARD						FICA – OASDI	86.80	MEDICARE – EMPLOYER	20.30
Pay Method HOURLY						GARNISHMENT	291.43	OASDI – EMPLOYER	86.80
Chk/Deposit Deposit						Deduction Total:	398.53	FEDERAL UNEMPLOYMENT	4.25
Check Number 639663								NV SUTA	50.40
Check Date 03–11–2016								NEVADA SUI BOND INT ASSESSMENT	11.20
Period Start 02–21–2016								NV MODIFIED BUS TAX	20.65
Period End 03–05–2016								W/C 9014	38.92
WkComp Class NV9014								Contribution Total:	274.06
Employee ID K37117									
Net Pay \$1001.47									
SUNRISE VILLAS IX		REGULAR PAY	80.00	17.5000	1,400.00	FICA – MEDICARE	20.30	ADMIN FEE	41.54
DUSLAK RICHARD						FICA – OASDI	86.80	MEDICARE – EMPLOYER	20.30
Pay Method HOURLY						GARNISHMENT	291.43	OASDI – EMPLOYER	86.80
Chk/Deposit Deposit						Deduction Total:	398.53	NV SUTA	42.00
Check Number 644590								NEVADA SUI BOND INT ASSESSMENT	11.20
Check Date 03–25–2016								NV MODIFIED BUS TAX	20.65
Period Start 03–06–2016								W/C 9014	38.92
Period End 03–19–2016								Contribution Total:	261.41
WkComp Class NV9014									
Employee ID K37117									
Net Pay \$1001.47									



ZZ PW James Management & Consulting, LLC
Payroll Check Journal Report
Pay Dates From 12/01/2015 To 10/31/2016 By Location By Employee Name

Sort-By Criteria	Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX	OVERTIME	4.00	26.2500	105.00	FICA – MEDICARE	21.83	ADMIN FEE	41.54
DUSLAK RICHARD	REGULAR PAY	80.00	17.5000	1,400.00	FICA – OASDI	93.31	MEDICARE – EMPLOYER	21.83
Pay Method HOURLY	Pay Total:	84.00	17.9167	1,505.00	GARNISHMENT	291.43	OASDI – EMPLOYER	93.31
Chk/Deposit Deposit					Deduction Total:	406.57	NV SUTA	45.15
Check Number 649320							NEVADA SUI BOND INT ASSESSMENT	12.04
Check Date 04–08–2016							NV MODIFIED BUS TAX	22.20
Period Start 03–20–2016							W/C 9014	41.84
Period End 04–02–2016							Contribution Total:	277.91
WkComp Class NV9014								
Employee ID K37117								
Net Pay \$1098.43								
SUNRISE VILLAS IX	REGULAR PAY	80.00	17.5000	1,400.00	FICA – MEDICARE	20.30	ADMIN FEE	41.54
DUSLAK RICHARD					FICA – OASDI	86.80	MEDICARE – EMPLOYER	20.30
Pay Method HOURLY					GARNISHMENT	291.43	OASDI – EMPLOYER	86.80
Chk/Deposit Deposit					Deduction Total:	398.53	NV SUTA	42.00
Check Number 654382							NEVADA SUI BOND INT ASSESSMENT	11.20
Check Date 04–22–2016							NV MODIFIED BUS TAX	20.65
Period Start 04–03–2016							W/C 9014	38.92
Period End 04–16–2016							Contribution Total:	261.41
WkComp Class NV9014								
Employee ID K37117								
Net Pay \$1001.47								



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Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX DUSLAK RICHARD Pay Method HOURLY Chk/Deposit Deposit Check Number 658808 Check Date 05-06-2016 Period Start 04-17-2016 Period End 04-30-2016 WkComp Class NV9014 Employee ID K37117 Net Pay \$1098.44	OVERTIME REGULAR PAY Pay Total: OVERTIME REGULAR PAY Pay Total: OVERTIME REGULAR PAY Pay Total: OVERTIME REGULAR PAY Pay Total:	4.00 80.00 84.00	26.2500 17.5000 17.9167	105.00 1,400.00 1,505.00	FICA - MEDICARE FICA - OASDI GARNISHMENT Deduction Total:	21.82 93.31 291.43 406.56	ADMIN FEE MEDICARE - EMPLOYER OASDI - EMPLOYER NV SUTA NEVADA SUI BOND INT ASSESSMENT NV MODIFIED BUS TAX W/C 9014 Contribution Total:	41.54 21.82 93.31 45.15 12.04 22.20 41.84 277.90	
SUNRISE VILLAS IX DUSLAK RICHARD Pay Method HOURLY Chk/Deposit Deposit Check Number 664260 Check Date 05-20-2016 Period Start 05-01-2016 Period End 05-14-2016 WkComp Class NV9014 Employee ID K37117 Net Pay \$1098.44	OVERTIME REGULAR PAY Pay Total: OVERTIME REGULAR PAY Pay Total: OVERTIME REGULAR PAY Pay Total:	4.00 80.00 84.00	26.2500 17.5000 17.9167	105.00 1,400.00 1,505.00	FICA - MEDICARE FICA - OASDI GARNISHMENT Deduction Total:	21.82 93.31 291.43 406.56	ADMIN FEE MEDICARE - EMPLOYER OASDI - EMPLOYER NV SUTA NEVADA SUI BOND INT ASSESSMENT NV MODIFIED BUS TAX W/C 9014 Contribution Total:	41.54 21.82 93.31 45.15 12.04 22.20 41.84 277.90	



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Sort-By Criteria		Pay Description	Units		Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
<hr/>										
SUNRISE VILLAS IX		OVERTIME	2.00		26.2500	52.50	FICA – MEDICARE	21.06	ADMIN FEE	41.54
DUSLAK RICHARD		REGULAR PAY	80.00		17.5000	1,400.00	FICA – OASDI	90.05	MEDICARE – EMPLOYER	21.06
Pay Method HOURLY		Pay Total:	82.00		17.7134	1,452.50	GARNISHMENT	291.43	OASDI – EMPLOYER	90.05
Chk/Deposit Deposit							Deduction Total:	402.54	NV SUTA	43.58
Check Number 668886									NEVADA SUI BOND INT ASSESSMENT	11.62
Check Date 06–03–2016									NV MODIFIED BUS TAX	21.42
Period Start 05–15–2016									W/C 9014	40.38
Period End 05–28–2016									Contribution Total:	269.65
WkComp Class NV9014										
Employee ID K37117										
Net Pay \$1049.96										
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SUNRISE VILLAS IX		OVERTIME	4.00		26.2500	105.00	FICA – MEDICARE	21.82	ADMIN FEE	41.54
DUSLAK RICHARD		REGULAR PAY	80.00		17.5000	1,400.00	FICA – OASDI	93.31	MEDICARE – EMPLOYER	21.82
Pay Method HOURLY		Pay Total:	84.00		17.9167	1,505.00	GARNISHMENT	291.43	OASDI – EMPLOYER	93.31
Chk/Deposit Deposit							Deduction Total:	406.56	NV SUTA	45.15
Check Number 673623									NEVADA SUI BOND INT ASSESSMENT	12.04
Check Date 06–17–2016									NV MODIFIED BUS TAX	22.20
Period Start 05–29–2016									W/C 9014	41.84
Period End 06–11–2016									Contribution Total:	277.90
WkComp Class NV9014										
Employee ID K37117										
Net Pay \$1098.44										



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Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX DUSLAK RICHARD Pay Method HOURLY Chk/Deposit Deposit Check Number 679157 Check Date 07-01-2016 Period Start 06-12-2016 Period End 06-25-2016 WkComp Class NV9014 Employee ID K37117 Net Pay \$1098.43	OVERTIME REGULAR PAY Pay Total: Chk/Deposit Deposit Check Number 684136 Check Date 07-15-2016 Period Start 06-26-2016 Period End 07-09-2016 WkComp Class NV9014 Employee ID K37117 Net Pay \$1025.71	OVERTIME	4.00	26.2500	105.00	FICA - MEDICARE	21.83	ADMIN FEE	41.54
		REGULAR PAY	80.00	17.5000	1,400.00	FICA - OASDI	93.31	MEDICARE - EMPLOYER	21.83
		Pay Total:	84.00	17.9167	1,505.00	GARNISHMENT	291.43	OASDI - EMPLOYER	93.31
						Deduction Total:	406.57	NV SUTA	45.15
								NEVADA SUI BOND INT ASSESSMENT	12.04
								NV MODIFIED BUS TAX	22.20
								W/C 9014	41.84
								Contribution Total:	277.91
SUNRISE VILLAS IX DUSLAK RICHARD Pay Method HOURLY Chk/Deposit Deposit Check Number 684136 Check Date 07-15-2016 Period Start 06-26-2016 Period End 07-09-2016 WkComp Class NV9014 Employee ID K37117 Net Pay \$1025.71	OVERTIME REGULAR PAY Pay Total: Chk/Deposit Deposit Check Number 684136 Check Date 07-15-2016 Period Start 06-26-2016 Period End 07-09-2016 WkComp Class NV9014 Employee ID K37117 Net Pay \$1025.71	OVERTIME	1.00	26.2500	26.25	FICA - MEDICARE	20.68	ADMIN FEE	41.54
		REGULAR PAY	80.00	17.5000	1,400.00	FICA - OASDI	88.43	MEDICARE - EMPLOYER	20.68
		Pay Total:	81.00	17.6080	1,426.25	GARNISHMENT	291.43	OASDI - EMPLOYER	88.43
						Deduction Total:	400.54	NV SUTA	42.79
								NEVADA SUI BOND INT ASSESSMENT	11.41
								NV MODIFIED BUS TAX	21.04
								W/C 9014	39.65
								Contribution Total:	265.54



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Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX		OVERTIME	1.00	26.2500	26.25	FICA – MEDICARE	20.68	ADMIN FEE	41.54
DUSLAK RICHARD		REGULAR PAY	80.00	17.5000	1,400.00	FICA – OASDI	88.43	MEDICARE – EMPLOYER	20.68
Pay Method HOURLY		Pay Total:	81.00	17.6080	1,426.25	GARNISHMENT	291.43	OASDI – EMPLOYER	88.43
Chk/Deposit Deposit						Deduction Total:	400.54	NV SUTA	42.79
Check Number 688869								NEVADA SUI BOND INT ASSESSMENT	11.41
Check Date 07–29–2016								NV MODIFIED BUS TAX	21.04
Period Start 07–10–2016								W/C 9014	39.65
Period End 07–23–2016								Contribution Total:	265.54
WkComp Class NV9014									
Employee ID K37117									
Net Pay \$1025.71									
SUNRISE VILLAS IX		OVERTIME	1.00	26.2500	26.25	FICA – MEDICARE	20.68	ADMIN FEE	41.54
DUSLAK RICHARD		REGULAR PAY	80.00	17.5000	1,400.00	FICA – OASDI	88.43	MEDICARE – EMPLOYER	20.68
Pay Method HOURLY		Pay Total:	81.00	17.6080	1,426.25	GARNISHMENT	291.43	OASDI – EMPLOYER	88.43
Chk/Deposit Deposit						Deduction Total:	400.54	NV SUTA	42.79
Check Number 692801								NEVADA SUI BOND INT ASSESSMENT	11.41
Check Date 08–12–2016								NV MODIFIED BUS TAX	21.04
Period Start 07–24–2016								W/C 9014	39.65
Period End 08–06–2016								Contribution Total:	265.54
WkComp Class NV9014									
Employee ID K37117									
Net Pay \$1025.71									



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Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX DUSLAK RICHARD Pay Method HOURLY Chk/Deposit Deposit Check Number 698426 Check Date 08-26-2016 Period Start 08-07-2016 Period End 08-20-2016 WkComp Class NV9014 Employee ID K37117 Net Pay \$1049.96		OVERTIME	2.00	26.2500	52.50	FICA - MEDICARE	21.06	ADMIN FEE	41.54
		REGULAR PAY	80.00	17.5000	1,400.00	FICA - OASDI	90.05	MEDICARE - EMPLOYER	21.06
		Pay Total:	82.00	17.7134	1,452.50	GARNISHMENT	291.43	OASDI - EMPLOYER	90.05
						Deduction Total:	402.54	NV SUTA	43.58
								NEVADA SUI BOND INT ASSESSMENT	11.62
								NV MODIFIED BUS TAX	21.42
								W/C 9014	40.38
								Contribution Total:	269.65
SUNRISE VILLAS IX DUSLAK RICHARD Pay Method HOURLY Chk/Deposit Deposit Check Number 703363 Check Date 09-09-2016 Period Start 08-21-2016 Period End 09-03-2016 WkComp Class NV9014 Employee ID K37117 Net Pay \$985.30		REGULAR PAY	79.00	17.5000	1,382.50	FICA - MEDICARE	20.05	ADMIN FEE	41.54
						FICA - OASDI	85.72	MEDICARE - EMPLOYER	20.05
						GARNISHMENT	291.43	OASDI - EMPLOYER	85.72
						Deduction Total:	397.20	NV SUTA	41.48
								NEVADA SUI BOND INT ASSESSMENT	11.06
								NV MODIFIED BUS TAX	20.39
								W/C 9014	38.43
								Contribution Total:	258.67



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Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX		REGULAR PAY	32.00	17.5000	560.00	FICA – MEDICARE	8.12	MEDICARE – EMPLOYER	8.12
DUSLAK RICHARD						FICA – OASDI	34.72	OASDI – EMPLOYER	34.72
Pay Method HOURLY						GARNISHMENT	291.43	NV SUTA	16.80
Chk/Deposit Check						Deduction Total:	334.27	NEVADA SUI BOND INT ASSESSMENT	4.48
Check Number 237993								NV MODIFIED BUS TAX	8.26
Check Date 09–15–2016								W/C 9014	15.57
Period Start 09–04–2016								Contribution Total:	87.95
Period End 09–07–2016									
WkComp Class NV9014									
Employee ID K37117									
Net Pay \$225.73									
SUNRISE VILLAS IX		REGULAR PAY	80.00	10.0000	800.00	FEDERAL INCOME TAX	9.62	ADMIN FEE	41.54
SESMAN JUSTIN						FICA – MEDICARE	11.60	MEDICARE – EMPLOYER	11.60
Pay Method HOURLY						FICA – OASDI	49.60	OASDI – EMPLOYER	49.60
Chk/Deposit Check						Deduction Total:	70.82	FEDERAL UNEMPLOYMENT	4.80
Check Number 181690								NV SUTA	28.80
Check Date 12–31–2015								NEVADA SUI BOND INT ASSESSMENT	6.40
Period Start 12–13–2015								NV MODIFIED BUS TAX	11.80
Period End 12–26–2015								W/C 9014	22.24
WkComp Class NV9014								Contribution Total:	176.78
Employee ID J37116									
Net Pay \$729.18									



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Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX SESAMAN JUSTIN Pay Method HOURLY Chk/Deposit Check Check Number 182984 Check Date 01-06-2016 Period Start 12-13-2015 Period End 12-26-2015 WkComp Class NV9014 Employee ID J37116 Net Pay \$180.08		OVERTIME	13.00	15.0000	195.00	FICA - MEDICARE FICA - OASDI Deduction Total:	2.83 12.09 14.92	ADMIN FEE MEDICARE - EMPLOYER OASDI - EMPLOYER FEDERAL UNEMPLOYMENT NV SUTA NEVADA SUI BOND INT ASSESSMENT NV MODIFIED BUS TAX W/C 9014 Contribution Total:	41.54 2.83 12.09 1.17 7.02 1.56 2.88 5.42 74.51
		HOLIDAY	8.00	10.0000	80.00	FEDERAL INCOME TAX	7.04	ADMIN FEE	41.54
		REGULAR PAY	70.00	10.0000	700.00	FICA - MEDICARE	11.31	MEDICARE - EMPLOYER	11.31
		Pay Total:	78.00	10.0000	780.00	FICA - OASDI	48.36	OASDI - EMPLOYER	48.36
		Chk/Deposit Deposit				Deduction Total:	66.71	FEDERAL UNEMPLOYMENT	4.68
		Check Number 621852						NV SUTA	28.08
		Check Date 01-15-2016						NEVADA SUI BOND INT ASSESSMENT	6.24
		Period Start 12-27-2015						NV MODIFIED BUS TAX	11.51
		Period End 01-09-2016						W/C 9014	21.68
		WkComp Class NV9014						Contribution Total:	173.40
SUNRISE VILLAS IX SESAMAN JUSTIN Pay Method HOURLY Chk/Deposit Deposit Check Number 621852 Check Date 01-15-2016 Period Start 12-27-2015 Period End 01-09-2016 WkComp Class NV9014 Employee ID J37116 Net Pay \$713.29		OVERTIME	13.00	15.0000	195.00	FICA - MEDICARE FICA - OASDI Deduction Total:	2.83 12.09 14.92	ADMIN FEE MEDICARE - EMPLOYER OASDI - EMPLOYER FEDERAL UNEMPLOYMENT NV SUTA NEVADA SUI BOND INT ASSESSMENT NV MODIFIED BUS TAX W/C 9014 Contribution Total:	41.54 2.83 12.09 1.17 7.02 1.56 2.88 5.42 74.51
		HOLIDAY	8.00	10.0000	80.00	FEDERAL INCOME TAX	7.04	ADMIN FEE	41.54
		REGULAR PAY	70.00	10.0000	700.00	FICA - MEDICARE	11.31	MEDICARE - EMPLOYER	11.31
		Pay Total:	78.00	10.0000	780.00	FICA - OASDI	48.36	OASDI - EMPLOYER	48.36
		Chk/Deposit Deposit				Deduction Total:	66.71	FEDERAL UNEMPLOYMENT	4.68
		Check Number 621852						NV SUTA	28.08
		Check Date 01-15-2016						NEVADA SUI BOND INT ASSESSMENT	6.24
		Period Start 12-27-2015						NV MODIFIED BUS TAX	11.51
		Period End 01-09-2016						W/C 9014	21.68
		WkComp Class NV9014						Contribution Total:	173.40



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Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX		REGULAR PAY	80.00	10.0000	800.00	FEDERAL INCOME TAX		ADMIN FEE	41.54
SESAMAN JUSTIN						FICA – MEDICARE		MEDICARE – EMPLOYER	11.60
Pay Method HOURLY						FICA – OASDI		OASDI – EMPLOYER	49.60
Chk/Deposit Deposit						Deduction Total:	70.24	FEDERAL UNEMPLOYMENT	4.80
Check Number 626226								NV SUTA	28.80
Check Date 01–29–2016								NEVADA SUI BOND INT ASSESSMENT	6.40
Period Start 01–10–2016								NV MODIFIED BUS TAX	11.80
Period End 01–23–2016								W/C 9014	22.24
WkComp Class NV9014								Contribution Total:	176.78
Employee ID J37116									
Net Pay \$729.76									
SUNRISE VILLAS IX		REGULAR PAY	72.00	10.0000	720.00	FEDERAL INCOME TAX		ADMIN FEE	41.54
SESAMAN JUSTIN						FICA – MEDICARE		MEDICARE – EMPLOYER	10.44
Pay Method HOURLY						FICA – OASDI		OASDI – EMPLOYER	44.64
Chk/Deposit Deposit						Deduction Total:	56.12	FEDERAL UNEMPLOYMENT	4.32
Check Number 631000								NV SUTA	25.92
Check Date 02–12–2016								NEVADA SUI BOND INT ASSESSMENT	5.76
Period Start 01–24–2016								NV MODIFIED BUS TAX	10.62
Period End 02–06–2016								W/C 9014	20.02
WkComp Class NV9014								Contribution Total:	163.26
Employee ID J37116									
Net Pay \$663.88									



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Sort-By Criteria	Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX SESAMAN JUSTIN Pay Method HOURLY Chk/Deposit Deposit Check Number 634847 Check Date 02-26-2016 Period Start 02-07-2016 Period End 02-20-2016 WkComp Class NV9014 Employee ID J37116 Net Pay \$729.76	REGULAR PAY	80.00	10.0000	800.00	FEDERAL INCOME TAX FICA - MEDICARE FICA - OASDI Deduction Total:	9.04 11.60 49.60 70.24	ADMIN FEE MEDICARE - EMPLOYER OASDI - EMPLOYER FEDERAL UNEMPLOYMENT NV SUTA NEVADA SUI BOND INT ASSESSMENT NV MODIFIED BUS TAX W/C 9014 Contribution Total:	41.54 11.60 49.60 4.80 28.80 6.40 11.80 22.24 176.78
SUNRISE VILLAS IX SESAMAN JUSTIN Pay Method HOURLY Chk/Deposit Deposit Check Number 639666 Check Date 03-11-2016 Period Start 02-21-2016 Period End 03-05-2016 WkComp Class NV9014 Employee ID J37116 Net Pay \$729.76	REGULAR PAY	80.00	10.0000	800.00	FEDERAL INCOME TAX FICA - MEDICARE FICA - OASDI Deduction Total:	9.04 11.60 49.60 70.24	ADMIN FEE MEDICARE - EMPLOYER OASDI - EMPLOYER FEDERAL UNEMPLOYMENT NV SUTA NEVADA SUI BOND INT ASSESSMENT NV MODIFIED BUS TAX W/C 9014 Contribution Total:	41.54 11.60 49.60 4.80 28.80 6.40 11.80 22.24 176.78



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Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX		REGULAR PAY	73.00	10.0000	730.00	FEDERAL INCOME TAX		ADMIN FEE	2.04
SESAMAN JUSTIN						FICA – MEDICARE		MEDICARE – EMPLOYER	10.58
Pay Method HOURLY						FICA – OASDI		OASDI – EMPLOYER	45.26
Chk/Deposit Deposit						Deduction Total:		FEDERAL UNEMPLOYMENT	57.88
Check Number 644593								NV SUTA	21.90
Check Date 03–25–2016								NEVADA SUI BOND INT ASSESSMENT	5.84
Period Start 03–06–2016								NV MODIFIED BUS TAX	10.77
Period End 03–19–2016								W/C 9014	20.29
WkComp Class NV9014								Contribution Total:	160.56
Employee ID J37116									
Net Pay \$672.12									
SUNRISE VILLAS IX		OVERTIME	4.00	15.0000	60.00	FEDERAL INCOME TAX		ADMIN FEE	15.04
SESAMAN JUSTIN		REGULAR PAY	80.00	10.0000	800.00	FICA – MEDICARE		MEDICARE – EMPLOYER	12.47
Pay Method HOURLY		Pay Total:	84.00	10.2381	860.00	FICA – OASDI		OASDI – EMPLOYER	53.32
Chk/Deposit Deposit						Deduction Total:		FEDERAL UNEMPLOYMENT	80.83
Check Number 649324								NV SUTA	25.80
Check Date 04–08–2016								NEVADA SUI BOND INT ASSESSMENT	6.88
Period Start 03–20–2016								NV MODIFIED BUS TAX	12.69
Period End 04–02–2016								W/C 9014	23.91
WkComp Class NV9014								Contribution Total:	181.77
Employee ID J37116									
Net Pay \$779.17									



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Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX		REGULAR PAY	80.00	10.0000	800.00	FEDERAL INCOME TAX	9.04	ADMIN FEE	41.54
SESAMAN JUSTIN						FICA – MEDICARE	11.60	MEDICARE – EMPLOYER	11.60
Pay Method HOURLY						FICA – OASDI	49.60	OASDI – EMPLOYER	49.60
Chk/Deposit Deposit						Deduction Total:	70.24	FEDERAL UNEMPLOYMENT	4.80
Check Number 654386								NV SUTA	24.00
Check Date 04–22–2016								NEVADA SUI BOND INT ASSESSMENT	6.40
Period Start 04–03–2016								NV MODIFIED BUS TAX	11.80
Period End 04–16–2016								W/C 9014	22.24
WkComp Class NV9014								Contribution Total:	171.98
Employee ID J37116									
Net Pay \$729.76									
SUNRISE VILLAS IX		REGULAR PAY	68.00	10.0000	680.00	FICA – MEDICARE	9.86	ADMIN FEE	41.54
SESAMAN JUSTIN						FICA – OASDI	42.16	MEDICARE – EMPLOYER	9.86
Pay Method HOURLY						Deduction Total:	52.02	OASDI – EMPLOYER	42.16
Chk/Deposit Deposit								FEDERAL UNEMPLOYMENT	3.09
Check Number 658813								NV SUTA	20.40
Check Date 05–06–2016								NEVADA SUI BOND INT ASSESSMENT	5.44
Period Start 04–17–2016								NV MODIFIED BUS TAX	10.03
Period End 04–30–2016								W/C 9014	18.90
WkComp Class NV9014								Contribution Total:	151.42
Employee ID J37116									
Net Pay \$627.98									



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Sort-By Criteria	Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX SESAMAN JUSTIN Pay Method HOURLY Chk/Deposit Deposit Check Number 664264 Check Date 05-20-2016 Period Start 05-01-2016 Period End 05-14-2016 WkComp Class NV9014 Employee ID J37116 Net Pay \$696.82	REGULAR PAY	76.00	10.0000	760.00	FEDERAL INCOME TAX FICA - MEDICARE FICA - OASDI Deduction Total:	5.04 11.02 47.12 63.18	ADMIN FEE MEDICARE - EMPLOYER OASDI - EMPLOYER NV SUTA NEVADA SUI BOND INT ASSESSMENT NV MODIFIED BUS TAX W/C 9014 Contribution Total:	41.54 11.02 47.12 22.80 6.08 11.21 21.13 160.90
SUNRISE VILLAS IX SESAMAN JUSTIN Pay Method HOURLY Chk/Deposit Deposit Check Number 668890 Check Date 06-03-2016 Period Start 05-15-2016 Period End 05-28-2016 WkComp Class NV9014 Employee ID J37116 Net Pay \$581.80	REGULAR PAY	63.00	10.0000	630.00	FICA - MEDICARE FICA - OASDI Deduction Total:	9.14 39.06 48.20	ADMIN FEE MEDICARE - EMPLOYER OASDI - EMPLOYER NV SUTA NEVADA SUI BOND INT ASSESSMENT NV MODIFIED BUS TAX W/C 9014 Contribution Total:	41.54 9.14 39.06 18.90 5.04 9.29 17.51 140.48



ZZ PW James Management & Consulting, LLC
Payroll Check Journal Report
Pay Dates From 12/01/2015 To 10/31/2016 By Location By Employee Name

Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX SESMAN JUSTIN Pay Method HOURLY Chk/Deposit Deposit Check Number 673627 Check Date 06-17-2016 Period Start 05-29-2016 Period End 06-11-2016 WkComp Class NV9014 Employee ID J37116 Net Pay \$754.47	OVERTIME REGULAR PAY Pay Total:		2.00	15.0000	30.00	FEDERAL INCOME TAX	12.04	ADMIN FEE	41.54
			80.00	10.0000	800.00	FICA - MEDICARE	12.03	MEDICARE - EMPLOYER	12.03
			82.00	10.1220	830.00	FICA - OASDI	51.46	OASDI - EMPLOYER	51.46
						Deduction Total:	75.53	NV SUTA	24.90
								NEVADA SUI BOND INT ASSESSMENT	6.64
								NV MODIFIED BUS TAX	12.24
								W/C 9014	23.07
								Contribution Total:	171.88
SUNRISE VILLAS IX SESMAN JUSTIN Pay Method HOURLY Chk/Deposit Deposit Check Number 679159 Check Date 07-01-2016 Period Start 06-12-2016 Period End 06-25-2016 WkComp Class NV9014 Employee ID J37116 Net Pay \$779.17	OVERTIME REGULAR PAY Pay Total:		4.00	15.0000	60.00	FEDERAL INCOME TAX	15.04	ADMIN FEE	41.54
			80.00	10.0000	800.00	FICA - MEDICARE	12.47	MEDICARE - EMPLOYER	12.47
			84.00	10.2381	860.00	FICA - OASDI	53.32	OASDI - EMPLOYER	53.32
						Deduction Total:	80.83	NV SUTA	25.80
								NEVADA SUI BOND INT ASSESSMENT	6.88
								NV MODIFIED BUS TAX	12.69
								W/C 9014	23.91
								Contribution Total:	176.61



ZZ PW James Management & Consulting, LLC
Payroll Check Journal Report
Pay Dates From 12/01/2015 To 10/31/2016 By Location By Employee Name

Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
SUNRISE VILLAS IX		REGULAR PAY	32.00	10.0000	320.00	FICA – MEDICARE	4.64	MEDICARE – EMPLOYER	4.64
SESMAN JUSTIN						FICA – OASDI	19.84	OASDI – EMPLOYER	19.84
Pay Method HOURLY						Deduction Total:	24.48	NV SUTA	9.60
Chk/Deposit Check								NEVADA SUI BOND INT ASSESSMENT	2.56
Check Number 221842								NV MODIFIED BUS TAX	4.72
Check Date 07–01–2016								W/C 9014	8.90
Period Start 06–26–2016								Contribution Total:	50.26
Period End 06–30–2016									
WkComp Class NV9014									
Employee ID J37116									
Net Pay \$295.52									
SUNRISE VILLAS IX		HOLIDAY	8.00	10.0000	80.00	FEDERAL INCOME TAX	103.06	ADMIN FEE	1,453.90
Break Total:		HOLIDAY	8.00	17.5000	140.00	FICA – MEDICARE	578.66	MEDICARE – EMPLOYER	578.66
Net Pay \$32380.06		OVERTIME	23.00	15.0000	345.00	FICA – OASDI	2,474.27	OASDI – EMPLOYER	2,474.27
		OVERTIME	54.00	26.2500	1,417.50	GARNISHMENT	4,371.45	FEDERAL UNEMPLOYMENT	97.20
		REGULAR PAY	1,094.00	10.0000	10,940.00	Deduction Total:	7,527.44	NV SUTA	1,281.17
		REGULAR PAY	1,542.00	17.5000	26,985.00			NEVADA SUI BOND INT ASSESSMENT	319.26
		Pay Total:	2,729.00	14.6235	39,907.50			NV MODIFIED BUS TAX	588.65
								W/C 9014	1,109.42
								Contribution Total:	7,902.53



ZZ PW James Management & Consulting, LLC
Payroll Check Journal Report
Pay Dates From 12/01/2015 To 10/31/2016 By Location By Employee Name

Sort-By Criteria		Pay Description	Hours / Units	Pay Rate	Amount	Deduction Description	Amount	Contribution Description	Amount
GRAND TOTALS		HOLIDAY	8.00	10.0000	80.00	FEDERAL INCOME TAX		ADMIN FEE	103.06
Net Pay	\$32380.06	HOLIDAY	8.00	17.5000	140.00	FICA - MEDICARE		MEDICARE - EMPLOYER	578.66
		OVERTIME	23.00	15.0000	345.00	FICA - OASDI		OASDI - EMPLOYER	2,474.27
		OVERTIME	54.00	26.2500	1,417.50	GARNISHMENT		FEDERAL UNEMPLOYMENT	97.20
		REGULAR PAY	1,094.00	10.0000	10,940.00	Deduction Total:		NV SUTA	1,281.17
		REGULAR PAY	1,542.00	17.5000	26,985.00			NEVADA SUT BOND INT ASSESSMENT	319.26
		Pay Total:	2,729.00	14.6235	39,907.50			NV MODIFIED BUS TAX	588.65
								W/C 9014	1,109.42
								Contribution Total:	7,902.53

Total Number of Employees: 2



ZZ PW James Management & Consulting, LLC
Client Allocation Report

Pay Dates from 12/01/2015 to 10/31/2016 -- By Location

Hours	Gross Pay	Admin	ER --Med	ER -- Soc	FUTA	SUTA	NVMBT	Work Comp	Timeclock	EMPLOYEE TOTAL
K37117	Duslak Richard									
1,596.00	28,542.50	830.80	413.87	1,769.64	50.40	910.85	649.34	793.48		33,960.88
J37116	Sesman Justin									
1,117.00	11,365.00	623.10	164.79	704.63	46.80	370.32	258.57	315.94		13,849.15
2,713.00	39,907.50	1,453.90	578.66	2,474.27	97.20	1,281.17	907.91	1,109.42		47,810.03

EXHIBIT “3”

AFFIDAVIT OF AMANDA DAVIS IN SUPPORT OF SUNRISE VILLAS IX HOMEOWNER'S
ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEVADA)
) ss.
 COUNTY OF CLARK)

I, Amanda Davis, declare as follows:

1. I am over eighteen (18) years of age and have personal knowledge of the facts set forth herein, and I am competent to testify to these facts.
2. I previously worked for PW James Management, which managed Sunrise Villas IX Homeowners Association during the year 2016. .
3. I make this Affidavit based upon my personal knowledge and observations, and that I am competent to testify as to the matters set forth herein.
4. Sunrise employed two gentleman named Richard Duslak and Justin Sesman as Independent Contractors as lawn maintenance workers.
5. They kept their own hours, had their own equipment and had a wide amount of discretion to perform their own duties.
6. Sunrise gave them basic projects such as lawn maintenance and then they determined the means in which to go about them.
7. I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of Nevada.

FURTHER THE AFFIANT SAYETH NAUGHT

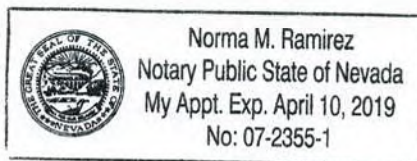
DATED this 6 day of August, 2018.


 Amanda Davis

SUBSCRIBED and SWORN to before me

1 this 6TH day of August, 2018.

2
3 Norma Ramirez
4 Notary Public



A-17-753606-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

February 25, 2021

A-17-753606-C

Simone Russo, Plaintiff(s)

vs.

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

February 25, 2021

8:00 AM

Minute Order re: Hearing on 3/3/21 at 1:30 p.m.

HEARD BY: Williams, Timothy C.

COURTROOM: Chambers

COURT CLERK: Christopher Darling

JOURNAL ENTRIES

- Department 16 Formal Request to Appear Telephonically

Please be advised that pursuant to Administrative Orders 20-10 and 20-24, Department 16 will temporarily require all matters to be heard via telephonic appearance. The court is currently scheduling all telephonic conferences through BlueJeans conferencing, wherein you dial in prior to your hearing to appear. The call-in number is:

Dial the following number: **1-408-419-1715**

Meeting ID: **552 243 859**

To connect, dial the telephone number then enter the meeting ID followed by #.

PLEASE NOTE the following protocol each participant will be required to follow:

Place your telephone on **mute** while waiting for your matter to be called.

- Do not place the conference on hold as it may play wait/hold music to others.

PRINT DATE: 02/25/2021

Page 1 of 2

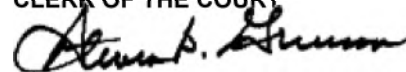
Minutes Date: February 25, 2021

A-17-753606-C

- Identify yourself before speaking each and every time as a record is being made.
- Please be mindful of sounds of rustling of papers or coughing.

CLERK'S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

Electronically Filed
2/25/2021 12:16 PM
Steven D. Grierson
CLERK OF THE COURT


RPLY

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Attorneys for Defendant,

SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

v.

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

Defendants.

Case No.: A-17-753606-C

Dept. No.: XVI

**DEFENDANT, SUNRISE HOA VILLAS IX
HOMEOWNERS ASSOCIATION'S REPLY
TO PLAINTIFF'S OPPOSITION TO
MOTION TO SET ASIDE AND/OR AMEND
JUDGMENT**

Hearing: March 1, 2021 at 1:30 PM

DEFENDANT, SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO SET ASIDE AND/OR AMEND JUDGMENT

Defendant, SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION ("SUNRISE"), by and through its counsel of record, the law firm of Springel & Fink LLP and the law firm of Lincoln Gustafson & Cercos, hereby files its Reply To Plaintiff's Oppositions¹ To Motion To Set Aside And/or Amend Judgment.

As the Court is aware, it has pending before it the following 3 interrelated motions:

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

Each motion, in one way or another, seeks to adjudicate the validity of the Default judgment entered against Duslak and Sesman on December 17, 2019 and/or to enforce the settlement terms. Per the terms of the written Global Settlement Agreement, Plaintiff effectively agreed to release any and all claims against Duslak and Sesman, even if they were SUNRISE's employees, save and except damages related to their role as independent contractors at the property.

Meanwhile, no record exists for the Default Judgment at issue. In the absence of a record, no one has the ability to confirm what representations Plaintiff made to this Court regarding Duslak's and/or Sesman's liability and whether the representations were in accordance with the express terms found within the Global Settlement Agreement.

Because SUNRISE has already addressed most of these issues in its Consolidated Opposition to Plaintiff's Motion Enforce Settlement and Reply to QBE's Motion to Enforce (set for oral argument on the same day as this Motion), and in an effort to save everyone some time, it incorporates those arguments, where applicable, for this Motion.

As a brief reminder, though, what this Court should do is enforce the actual signed Global Settlement Agreement between all parties, including the addendum between Plaintiff and SUNRISE

¹ Plaintiff recently filed a Supplemental Opposition on February 10, 2021, and a Second Supplemental Opposition on February 22, 2021. Sunrise objects and asks the court to not consider them because Plaintiffs filed them in violation of EDCR 2.20 which contemplates only a Motion, possible Joinder, Opposition and Reply.

where Plaintiff expressly agreed that for ALL PURPOSES related to this litigation and settlement (which would certainly include the later default judgment and attempts to collect), Duslak and Sesman were SUNRISE's independent contractors, not its employees. Because it does not appear that the Default Judgment this Court entered takes this limitation into consideration, it should either vacate or modify the Judgment with the understanding that the latter outcome is problematic because it requires Plaintiff to present evidence as to Duslak and Sesman's conduct that this Court never likely considered and cannot now be considered given that no record exists.² At a minimum and to the extent that Plaintiff's position is legitimately stated, the Court can and should construe the briefing by the parties to reflect that no meeting of the minds exists.

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

DATED this 25th day of February, 2021.

SPRINGEL & FINK LLP

/s/ Leonard T. Fink, Esq.

By: _____

LEONARD T. FINK, ESQ.

Nevada Bar No. 6296

RAVEN M. YIM, ESQ.

Nevada Bar No. 14972

9075 W. Diablo Drive, Suite 302

Las Vegas, NV 89148

Attorneys for Defendant,

SUNRISE HOA VILLAS IX HOMEOWNERS

ASSOCIATION

² Despite repeated requests, Plaintiff's counsel has refused to produce copies of the documentation he provided to this Court in connection with the Default Judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After reviewing the many recent motions, this Court should be well aware of the relevant factual and procedural history for this claim. Again, for brevity's sake, SUNRISE directs the Court to review SUNRISE's Consolidated Reply. It is, however, important to highlight that although Plaintiff did not initially name Duslak and Sesman as defendants in the case when he filed suit in 2017, he added each as defendants by way of an amended Complaint filed in 2018. Importantly, Plaintiff never asserted at any time in this litigation that they were employees or were working with the course and scope of any employment. Meanwhile, SUNRISE'S property manager, Amanda Davis (then of PW JAMES) executed an Affidavit under penalty of perjury that Duslak and Sesman acted as independent contractors and were not SUNRISE's employees. Based on this representation, coupled with the absence of any allegations made by the Plaintiff to the contrary, SUNRISE did not appear for either individuals.³

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

In reliance on the written stipulation that Duslak and Sesman were independent contractors, SUNRISE did not oppose Plaintiff's attempts to obtain the Default Judgment against them in that limited capacity. Understandably, however, SUNRISE did not, and could not, agree to a settlement in which either could face exposure as its alleged employees. The Default Judgment, however, itself includes no limiting provisions reflecting that Duslak and Sesman's liability is based solely on their conduct as independent contractors. *See* Motion to Set Aside, Exhibit 8.⁴ Further, SUNRISE has no idea what documents or evidence Plaintiff submitted to the Court to support the Default, much less what testimony it heard. While the Default Judgment itself includes no limiting verbiage, it appears that the judgment is

³ The Amended Complaint omits any allegation that Duslak and Sesman were SUNRISE employees.

⁴ Compounding matters, the docket includes no record of the evidence submitted to substantiate the judgment hearing was not transcribed. *See* Motion to Set Aside Exhibit 9. Given this, the SUNRISE cannot determine the basis for Plaintiff's Judgment against Duslak and Sesman.

based on contentions that each was SUNRISE's employee based on all of Plaintiff's recent motions, oppositions and replies related to the Judgment and settlement.

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

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

II. BACKGROUND FACTS

See SUNRISE's Consolidated Opposition for the relevant details from the hearings related to the underlying settlement.

III. POINTS AND AUTHORITIES

A. SUNRISE has an Interest In Setting Aside the Default Judgment

Despite Plaintiff's claims to the contrary, SUNRISE has a direct interest in the Default Judgment, and thus standing. In the Federal action Duslak and Sesman are seeking damages against it as former employees based on the Default judgment. Curiously though, Duslak and Sesman's counsel has not even attempted to overturn the Default Judgment. Instead, he is just hoping to pass through the damages, while adding some on of his own. Thus, SUNRISE is the only party that seems to actually care about the Default Judgment, and may be the only one directly affected by it. It is, therefore, the real party in interest.

B. SUNRISE's Motion is Timely and This Court has the Authority to Set Aside the Default Judgment Under NRCP 60(b)(4) and/or NRCP 60(b)(6).

In the alternative, SUNRISE requests this Court to set aside the Default Judgment pursuant to NRCP 60(b)(4) and/or (6)⁵ as void or due to "other justifiable reasons." NRCP 60(c)(1) notes that a

⁵ To the extent that SUNRISE intimated or even accused Plaintiff's counsel of committing fraud or misconduct in securing the Default Judgment under NRCP 60(b)(3), that is expressly withdrawn. Because Plaintiff has not produced any record of the Default Judgment, though, SUNRISE has no way of knowing what evidence counsel put on or testimony he elicited.

Motion based on these factors must be filed “within a reasonable time.” Because SUNRISE only recently became aware of what appears to be a concerted effort between Duslak, Sesman and Plaintiff to blow past and ignore the express terms of the Global Settlement Agreement, this motion is timely.

Plaintiff, Duslak and Sesman apparently “lied in wait” until the time for anyone to attack the Default Judgment under other provisions within NRCP 60 passed. It was not until Duslak and Sesman named SUNRISE as a third party defendant on January 4, 2021, that SUNRISE even became aware of the necessity to seek to set aside the Default Judgment and/or enforce the Global Settlement Agreement. Duslak and Sesman served SUNRISE with their Third Party Complaint on January 21, 2021; the same day that SUNRISE filed this Motion. It would be harder to move any quicker than that to ask this Court for relief. Essentially, if the Court buys into this “scheme,” it makes the Global Settlement Agreement completely meaningless, which is clearly not what the parties contemplated.

The Global Settlement Agreement specifically released SUNRISE for any liability related to Duslak and Sesman’s work. It further limited Plaintiff’s claims against Duslak and Sesman only to their role as “independent contractors.” Thus, taking the entire Agreement and Addendum into account, Plaintiff did agree to release Duslak and Sesman for their work as employees, should that even turn out be true. Most important, though, Plaintiff never made Duslak and Sesman’s status as employees versus independent contractors an issue in the case, so no one conducted any discovery on it. Plaintiff never made an allegation in his Amended complaint, any motion or any NRCP 16.1 disclosure that they were employees; all of which were well before SUNRISE’s counsel made his representations related to the Settlement Agreement.

Thus, to avoid a manifest injustice under NRCP 60(b)(6), this Court *must* set aside the Default Judgment and at the very least, allow Duslak and Sesman to assert protection under the Global Settlement Agreement.

C. This Court has the Authority to Amend the Default Judgment Due to a Clerical Mistake, Oversight or Omission.

NRCP 60(a) allows a court to correct clerical mistakes, oversights and omissions. SUNRISE was not, and has not been privy, to the arguments Plaintiff made or the evidence he presented in the proceedings resulting in the Default Judgment against Duslak and Sesman. Furthermore, SUNRISE does not have access to the pleadings or the proceedings on the record. It does not know if there was a clerical mistake, omission or oversight in reaching that Default Judgment. SUNRISE contends that the Default

Judgment should have included the terms “as independent contractors and not employees of Sunrise” per the addendum to the Global Settlement Agreement.

Further, while SUNRISE acknowledges the time limitations from NRCP 59, it could not have known up until Duslak and Sesman sued it claiming that they were employees, and based on Plaintiff’s now clear attempts to get around what he agreed to in the settlement agreement, that it even needed to ever address the Default Judgment at all. The Court should, therefore, exercise its equitable powers and allow SUNRISE to proceed.

While this may be an innocent clerical error, omission or oversight, SUNRISE’s Motion simply requests this Court to reflect those words in the Default Judgment entered against Duslak and Sesman on December 17, 2019 as it does not contain that specific language per the Global Settlement Agreement. (See **Exhibit “A”** attached hereto).

If a court is going to consider setting aside or , it may toll the statute of limitations in equity. In *City of North Las Vegas v. State Local Government Employee-management Relations Bd.*, 127 Nev. 631, 261 P.3d 1047 (2011), the court recognized that “equitable tolling ‘focuses on whether there was excusable delay by the Plaintiff. If a reasonable Plaintiff would have known of the existence of a possible claim within the limitations period, then equitable tolling will serve to extend the statute of limitations for filing suit until the Plaintiff can gather what information he needs.’” *Id* 640. A “reasonable conclusion that equitable tolling is permitted with respect to claims that are before it is entitled to deference.” *Id*.

While this case is distinguishable in that SUNRISE is a non-party, there is no reason why this Court should not also apply the same requirements regarding tolling any applicable deadlines for SUNRISE to attack the Default Judgment. Again, SUNRISE was not even aware that it had anything to be concerned with over the Default Judgment until Duslak and Sesman sued it in the Federal action and, for the first time, asserted that they were its employees.

D. The Documents Plaintiff Produced and Referred to in His Second Supplement to his Opposition Actually Support SUNRISE’s Position and Require this Court to Set Aside the Default Judgment

Finally, Plaintiff attaches the Payroll Check Journal Report from AdvanstaffHR that SUNRISE disclosed in the Federal case as Exhibit 2 to his Second Supplemental Opposition. AdvanstaffHR is a Professional Employer Organization (“PEO”) from North Las Vegas that “relieves the employer of many

of the mundane responsibilities they face every day.” See its webpage as **Exhibit “B.”** As a PEO, Advanstaff HR enters into a contractual co-employment agreement with its clientele. Through co-employment, it becomes the legal employer of record for the noted employees. See article by Julie Sloan for CNN Money, March 28, 2007 as **Exhibit “C.”**

As the Court can plainly see, AdvanstaffHR was working with SUNRISE’s prior management company, PW JAMES. Thus, at the very most, Duslak and Sesman were AdvanstaffHR’s and PW JAMES’, co-employees. It is, however, clear from these documents, that they were NOT SUNRISE’s employees, as SUNRISE represented to the Court and Plaintiff on the record. Even Mr. Duslak’s self-serving affidavit that he is trying to use to recover millions of dollars from SUNRISE and/or QBE (as referenced in Plaintiff’s Second Supplemental Opposition, pages 2 and 3) does not change this.

Because Plaintiff never asserted or claimed that either Duslak or Sesman were SUNRISE’s employees, SUNRISE did not conduct this thorough of an investigation. NRCP 16.1(a)(1)(A)(ii), in fact, only required it to produce documents and information related to Plaintiff’s claims:

(ii) a copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, including for impeachment or rebuttal, and, unless privileged or protected from disclosure, any record, report, or witness statement, in any form, concerning the incident that gives rise to the lawsuit

More important, as Plaintiff very clearly argued in his Opposition on page 9, lines 9-16, he agreed to release PW JAMES’ employees. While SUNRISE continues to assert that even without this same exact language, it is entitled to the same protection, there is *no* argument, that this language dismisses any of PW JAMES’ employees, which now appears to include Duslak and Sesman!

The existence of this documentation highlights the exact reason why SUNRISE required that the Global Settlement Agreement include a release of any claims premised on Duslak and Sesman as former employees. While SUNRISE contends that neither were employees, it agreed to settle this case to avoid having to address this issue. QBE, who funded the settlement, had similar interests because it only agreed to settle if it could obtain a benefit in doing so. Any settlement that includes SUNRISE, but excludes its employees, is of no value and is inconsistent with the core intent in agreeing to fund a settlement.

///

V. CONCLUSION

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

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

DATED this 25th day of February, 2021.

SPRINGEL & FINK LLP

/s/ Leonard T. Fink, Esq.

By:

 LEONARD T. FINK, ESQ.
 Nevada Bar No. 6296
 RAVEN M. YIM, ESQ.
 Nevada Bar No. 14972
 9075 W. Diablo Drive, Suite 302
 Las Vegas, NV 89148
 Attorneys for Defendant,
 SUNRISE HOA VILLAS IX HOMEOWNERS
 ASSOCIATION

CERTIFICATE OF SERVICE
Simone Russo v. Cox Communications Las Vegas, Inc., et al.
District Court Case No. A-17-753606-C

STATE OF NEVADA)
) ss.
 COUNTY OF CLARK)

I, Alma Duarte, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 9075 W. Diablo Drive, Suite 275, Las Vegas, Nevada, 89148.

On February 25, 2021, I served the document described as **DEFENDANT, SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO SET ASIDE AND/OR AMEND JUDGMENT** on the following parties:

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

- _____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business.
- _____ VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.
- X VIA ELECTRONIC SERVICE: by submitting the foregoing to the Court's E-filing System for Electronic Service upon the Court's Service List pursuant to EDCR 8. The copy of the document electronically served bears a notation of the date and time of service. The original document will be maintained with the document(s) served and be made available, upon reasonable notice, for inspection by counsel or the Court.

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

/s/ Alma Duarte

 An employee of Springel & Fink LLP

EXHIBIT A

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.

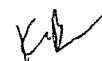
This Agreement has been negotiated and entered into in the State of Nevada, and shall be governed by, construed and enforced in accordance with the internal laws of the State of Nevada.

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.

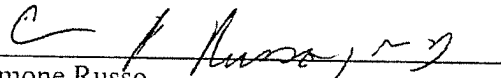
ii) Attorney's Fees For Future Action: Should any PARTY hereto reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, the prevailing PARTY shall be reimbursed by the losing PARTY for all costs and expenses incurred thereby including, but not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

A handwritten signature in black ink, appearing to be 'F. R.', located in the bottom right corner of the page.

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

Dated: _____

SIMONE RUSSO


Simone Russo

Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

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

Dated: _____

SIMONE RUSSO

Simone Russo

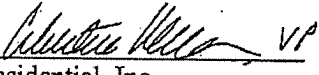
Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Sunrise Villas IX Homeowner's Association

Dated: 12/4/19

IES RESIDENTIAL, INC.

 VP
IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

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

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: 1/12/20

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

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

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By: 

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

Dated: _____

SPRINGEL & FINK, LLP

By: _____

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

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: 

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

Dated: _____

SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: 11/22/2019

KEVIN BUSHBAKER



Kevin Bushbaker

Dated: _____

CHRIS SCARCELLI

Chris Scarcelli

SIGNATURES TO FOLLOW ON NEXT PAGE

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

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

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

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

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: _____

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

Dated: _____

SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

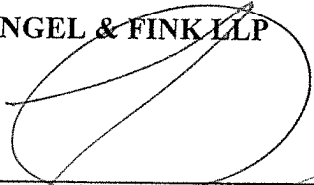
APPROVED AS TO FORM AND CONTENT:

Dated: _____

LAW OFFICE OF DAVID SAMPSON, LLC

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

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

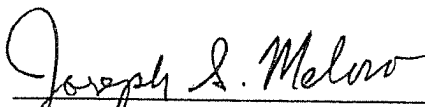
By: _____

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

Dated: _____

MORRIS, SULLIVAN & LEMKUL

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

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

By: _____

 Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: _____

LIPSON NEILSON

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

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

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Sunrise Villas IX Homeowner's Association

Dated: 12/4/19

IES RESIDENTIAL, INC.

Christopher Villanueva VP
IES Residential, Inc.

Dated: _____

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

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

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

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: 1/2/20

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

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

Dated: _____

PW JAMES MANAGEMENT & CONSULTING, LLC

PW James Management & Consulting, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By: 

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

Dated: _____

SPRINGEL & FINK LLP

By: _____

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

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: 

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

Dated: _____


SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: 11/22/2019

KEVIN BUSHBAKER



Kevin Bushbaker

Dated: _____

CHRIS SCARCELLI

Chris Scarcelli

SIGNATURES TO FOLLOW ON NEXT PAGE

APPROVED AS TO FORM AND CONTENT:

Dated: _____

LAW OFFICE OF DAVID SAMPSON, LLC

By: _____

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

Dated: _____

SPRINGEL & FINK LLP

By: _____

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

Dated: _____

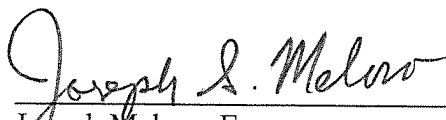
MORRIS, SULLIVAN & LEMKUL

By: _____

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

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

By: _____


 Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

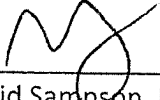
STIPULATION BETWEEN SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AND SIMONE RUSSO RELATED TO CASE A-17-753606 (SIMONE RUSSO V. COX COMMUNICATIONS LAS VEGAS, INC.).

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

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By:



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

Dated: _____

SPRINGEL & FINK LLP

By:

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

EXHIBIT B

Cure your HR ills

More business owners turn to professional employer organizations to help them manage the small stuff.

By **Julie Sloane**, FSB writer

March 28 2007: 7:10 AM EDT

(FSB Magazine) – Elizabeth Bradt was a great veterinarian but a lousy HR manager. Within a year of opening All Creatures Veterinary Hospital in Salem, Mass., half her employees had quit. Bradt blamed herself; unsure how to ask the right interview questions, she ended up hiring technicians who didn't fit. And while she offered health insurance, Bradt couldn't lure top talent with the kinds of benefits larger employers could provide: 401(k)s, dental insurance, health spending accounts. But then Bradt found a solution to her HR woes: She took her entire staff off the payroll.

No, she didn't fire them. Instead, All Creatures (creaturehealth.com) enlisted the help of Integrated Staffing (integratedstaffing.com), one of about 700 professional employer organizations (PEOs) in the U.S. PEOs work by becoming the legal employer of your staff for purposes of payroll, benefits, and HR. By aggregating the employees of many businesses, a PEO can often offer better rates on health and workers' compensation insurance, while giving employees big-business-style benefits.

[The Ultimate Small-Business Resource Guide](#)

For the business owner PEOs take on the headache of payroll taxes, regulatory compliance, and a gamut of HR issues, from hiring to drafting an employee handbook to mediating conflicts. Although PEOs have been around since the early 1980s, the industry has been growing at 15 to 20 percent annually over the past several years, according to the National Association of Professional Employer Organizations (napeo.org), an industry trade group.

The benefits go beyond the balance sheet. Bradt says Integrated Staffing CEO Laurie LaBrie has eased interoffice communications as well. "When we first opened practice, I didn't realize employees would come to me with personal problems," says Bradt. "Laurie taught me that to keep people, I need to make time for them." LaBrie also helps Bradt form agendas for staff meetings, follow up on problems raised there, and encourage the office technicians to set up monthly meetings to learn new skills.

The perks

According to winning workplaces, a nonprofit human resources consultancy in Evanston, Ill. (winningworkplaces.org), the cost of replacing an employee ranges from 50 to 150 percent of that employee's annual salary. And the ability to offer big-company benefits allows small employers to compete for highly skilled workers.

Bradt went a year without any employee turnover and was named businesswoman of the year by the Salem Chamber of Commerce for 2006. She estimates that losing a technician sets her back \$20,000; a lost veterinarian costs at least \$50,000. "Having Integrated Staffing has been a huge savings," says Bradt.

PEO services typically require a one-time startup fee and then an ongoing percentage of payroll, which can fluctuate from less than 5 percent to more than 15 percent, depending on the services and the average worker salary. But experts caution that the savings from PEOs are not always measurable in dollars.

"Looking at health care, I am not convinced a PEO is always going to save a company more money than bidding out the job on its own," says Nancy Anheier, owner of HR Direction (hrdirection.com), a consulting firm in Kennesaw, Ga. "If your employees are primarily young, healthy males, you're probably going to get great rates - maybe lower than what a PEO could offer."

[Hired guns on the cheap](#)

Aside from financial benefits, PEOs can offer peace of mind for harried entrepreneurs, freeing them to expand their businesses. That's what happened to Margie Halsell. The co-owner of Halsell Builders (halsellbuilders@yahoo.com), an 11-employee construction company in Santa Maria, Calif., Halsell hoped to start a sister real estate development firm but found herself spending three days a week bogged down with administrative paperwork.

In March she hired a local PEO, Your People Professionals (ypp.com), and seven months later had completed a business plan, market analysis and financing for her new business's first development. She recently hired three employees through Your People Professionals, which recruited and interviewed potential hires and administered personality and construction-skill tests. "Your People Professionals is making us money because the resources we have are better spent more directly in services we're trying to provide rather than HR or insurance," she says.

Halsell's PEO helped her in other ways as well. When she hired it, Halsell was in the middle of a workers' compensation insurance audit and had just been sent a \$58,000 bill for incorrect reporting. Your People Professionals' insurance specialist resubmitted Halsell's records and got the bill reduced to \$15,000.

"The service costs us \$12,000 a year, so that \$43,000 savings alone paid for more than three years," says Halsell. In July the PEO even got Halsell a \$10,000 refund from a liability insurance audit for the year before she hired it. "It is such a



Pet Peeve: Bradt (framed by a cat skull) was experiencing 50 percent annual turnover.



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Collaring turnover

Because PEOs help business owners comply with state laws, make sure to choose one that operates in the appropriate state. The National Association of Professional Employer Organizations (napeo.org) offers a directory of its 400 member PEOs and guidance on what to consider when choosing one. The members of the nonprofit Employer Services Assurance Corp. (esacorp.org) submit yearly independent audit information to ESAC, which reimburses clients should a member fail or defraud them.

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relief to know that all these critical aspects of our business are being taken care of by experts in the field," says Halsell. "It just gives me a sense of freedom."

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As a business owner, you pride yourself on giving good customer service. What experiences have you had - whether with a hotel, restaurant, airline, supplier or service provider (cable, phone, insurance, car dealer) - that has either delighted you or made you mad? Let us know what your experiences have been by writing to us (please include your contact information and your business's name and city) at fsb_mail@timeinc.com.

[The Ultimate Small-Business Resource Guide](#) ■

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EXHIBIT C



About AdvanStaff HR

Unmatched experience, personal service, systems that scale.

Headquartered in Las Vegas, Nevada, AdvanStaff HR has been helping businesses grow and scale since 1993. As a PEO (Professional Employer Organization), we relieve the employer of many of the mundane responsibilities they face every day. We are experts in fields of payroll processing, benefit administration, employee onboarding, human resource compliance, workers compensation and safety programs administration, and much more.

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-

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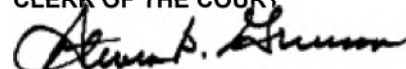


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Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,)

Plaintiff,)

vs.)

CASE NO: A-17-753606-C

DEPT. NO: XVI

COX COMMUNICATIONS LAS VEGAS,)

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

IES RESIDENTIAL, INC., SUNRISE)

VILLAS IX HOMEOWNERS)

ASSOCIATION, J & G LAWN)

MAINTENANCE, KEVIN BUSHBAKER,)

PWJAMES MANAGEMENT &)

CONSULTING, LLC., J. CHRIS)

SCARCELLI, DOE LANDSCAPER,)

RICHARD DUSLAK, JUSTIN SESMAN,)

AND DOES I-V, and ROE)

CORPORATIONS I-V, inclusive,)

Defendants.)

THIRD SUPPLEMENT TO
OPPOSITION TO MOTION TO SET
ASIDE AND/OR AMEND JUDGMENT

**THIRD SUPPLEMENT TO OPPOSITION TO MOTION TO SET ASIDE AND/OR
AMEND JUDGMENT**

Plaintiff, SIMONE RUSSO, supplements his opposition to SUNRISE's motion and QBE's joinder¹ to the motion to set aside and/or amend the judgment that was duly entered in

¹ As of the filing of this opposition QBE is not a party to this action. QBE filed a motion to intervene over a year after judgment was entered in this matter, which motion has not yet been

this matter on December 17, 2019, and for which Notice of Entry of the said Judgment was served December 17, 2019.

SUNRISE latest reply brief, filed 2/25/2021 asserts, for the very first time, that DUSLAK and SESMAN were employees of PW JAMES, and thus released. Plaintiff directs the Court to the numerous affirmations by SUNRISE as well as PW JAMES, in the settlement agreement, that DUSLAK and SESMAN were not released, that employees of Defendants (including PW JAMES) were released “EXCLUDING RICHARD DUSLAK and/or JUSTIN SESMAN”, and that any language that could be used to argue that Plaintiff’s rights against DUSLAK and/or SESMAN would be deemed “null and void”. Even if DUSLAK and SESMAN were employees of PW JAMES, pursuant to the written agreement, DUSLAK and SESMAN were not released.

Additionally, the Court should know that in concluding the settlement of this matter counsel for SUNRISE and PW JAMES affirmatively stated that DUSLAK and SESMAN were not employees of PW JAMES. *See* Exhibit “1” attached hereto. In responding to Plaintiff’s counsel’s inquiry, counsel for SUNRISE and PW JAMES states “based on this will confirm that based on all of the information that I have, including conversations with Sunrise board members, that Duslak and Sesman were just “two guys with a lawnmower.” As far as I know they never worked in any capacity for PW James.” *Id.* Neither SUNRISE nor PW JAMES can now claim DUSLAK and SESMAN were PW JAMES employees when counsel for SUNRISE and PW JAMES affirmatively confirmed they were not.

ruled on and should be denied as a party is not permitted to intervene after judgment is entered as required in *Nalder v. Eighth Judicial Dist. Ct.*, 136 Nev.Adv.Op. 24 (2020). The joinder, as well as any other documents filed by QBE in this matter, are improper and represent rogue pleadings which the Court should disregard.

Finally, the records produced by SUNRISE do not indicate DUSLAK and SESMAN were employees of PW JAMES. The records clearly list DUSLAK and SESMAN ad SUNRISE employees. *See*, Exhibit “2” to SIMONE’s second supplement.

CONCLUSION

For the foregoing reasons SUNRISE’s motion should be denied.

DATED this 25th day of February, 2021.

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ *David Sampson*

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Fax No: 888-209-4199

Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, LLC., and that on this 25th day of February, 2021, I served a copy of the foregoing **SUPPLEMENT** on all the remaining parties in this matter via the court's electronic online filing system and as follows:

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

LEONARD FINK, ESQ.
9075 W. Diablo Dr. Suite 302
Las Vegas NV 89148
Counsel for SUNRISE

And

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

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

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

EXHIBIT “1”



David Sampson <davidsampsonlaw@gmail.com>

Fwd: Russo

1 message

David Sampson <davidsampsonlaw@gmail.com>
To: David Sampson <david@davidsampsonlaw.com>

Thu, Feb 25, 2021 at 1:56 PM

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

From: **David Sampson** <davidsampsonlaw@gmail.com>
Date: Tue, Apr 14, 2020 at 2:06 PM
Subject: Re: Russo
To: Leonard Fink <lfink@springelfink.com>

Thank you. As you are counsel for PW James, and as you have indicated you are not aware of any evidence indicating Duslak and/or Sesman ever worked for PW James, I will sign the stipulation as written.

Thank you again,

On Tue, Apr 14, 2020 at 12:23 PM Leonard Fink <lfink@springelfink.com> wrote:

Dave, nice speaking with you. I'm glad to hear that you are all doing well with everything that is going on. As we discussed, this will confirm that based on all of the information that I have, including conversations with Sunrise board members, that Duslak and Sesman were just "two guys with a lawnmower." As far as I know they never worked in any capacity for PW James.

Let me know if you need anything else.

Lenny

Leonard Fink
Partner



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

--
David Sampson, Esq.

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

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

The Law Office of David Sampson, LLC.

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Thank you.

--

David Sampson, Esq.

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

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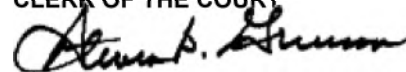
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Thank you.

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Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,)

Plaintiff,)

vs.)

CASE NO: A-17-753606-C

DEPT. NO: XVI

COX COMMUNICATIONS LAS VEGAS,)

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

IES RESIDENTIAL, INC., SUNRISE)

VILLAS IX HOMEOWNERS)

ASSOCIATION, J & G LAWN)

MAINTENANCE, KEVIN BUSHBAKER,)

PWJAMES MANAGEMENT &)

CONSULTING, LLC., J. CHRIS)

SCARCELLI, DOE LANDSCAPER,)

RICHARD DUSLAK, JUSTIN SESMAN,)

AND DOES I-V, and ROE)

CORPORATIONS I-V, inclusive,)

Defendants.)

FOURTH SUPPLEMENT TO
OPPOSITION TO MOTION TO SET
ASIDE AND/OR AMEND JUDGMENT

**FOURTH SUPPLEMENT TO OPPOSITION TO MOTION TO SET ASIDE AND/OR
AMEND JUDGMENT**

Plaintiff, SIMONE RUSSO, supplements his opposition to SUNRISE's motion and QBE's joinder¹ to the motion to set aside and/or amend the judgment that was duly entered in

¹ As of the filing of this opposition QBE is not a party to this action. QBE filed a motion to intervene over a year after judgment was entered in this matter, which motion has not yet been

this matter on December 17, 2019, and for which Notice of Entry of the said Judgment was served December 17, 2019.

SIMONE appreciates that he has provided multiple supplements in this matter. That being said, the Nevada Supreme Court issued an opinion the day of the instant filing, February 25, 2021, that is on point in this matter. The opinion, *Jane Doe v. La Fuente, Inc.*, 137 Nev.Adv.Op. 3 (2021), a copy of which is attached hereto as Exhibit “1”, details that even if an employment relationship has been “contractually disavowed”, as SUNRISE claims SIMONE did in the instant matter, the purported employees can still qualify as “employees within the legal meaning of the term.” *Id* at P. 6.

In *Jane Doe*, exotic dancers signed agreements with an establishment wherein the dancers “contractually disavowed any employment relationship” with the facility. That contractual agreement notwithstanding, the Nevada Supreme Court held that the dancers were “employees within the legal meaning of the term.” *Id*. The same applies in the instant matter. Despite any contractual agreement regarding the employment status of Duslak and Sesaman in this matter, if any, that SUNRISE and SIMONE may or may not have entered into, Mr. Duslak and Mr. Sesman still have every right to assert that they qualify as employees under the legal meaning of the term. There is nothing at all improper with SIMONE maintaining his judgment against Duslak and Sesman as individuals, with Duslak and Sesman asserting in the federal declaratory relief action that they qualify as employees under the law.

///

///

ruled on and should be denied as a party is not permitted to intervene after judgment is entered as required in *Nalder v. Eighth Judicial Dist. Ct.*, 136 Nev.Adv.Op. 24 (2020). The joinder, as well as any other documents filed by QBE in this matter, are improper and represent rogue pleadings which the Court should disregard.

CONCLUSION

For the foregoing reasons SUNRISE's motion should be denied.

DATED this 25th day of February, 2021.

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ *David Sampson*

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Fax No: 888-209-4199

Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, LLC., and that on this 25th day of February, 2021, I served a copy of the foregoing **SUPPLEMENT** on all the remaining parties in this matter via the court's electronic online filing system and as follows:

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

LEONARD FINK, ESQ.
9075 W. Diablo Dr. Suite 302
Las Vegas NV 89148
Counsel for SUNRISE

And

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

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

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

EXHIBIT “1”

137 Nev., Advance Opinion **3**

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANE DOE DANCER I; JANE DOE
DANCER II; JANE DOE DANCER III;
AND JANE DOE DANCER V,
INDIVIDUALLY, AND ON BEHALF OF
A CLASS OF SIMILARLY SITUATED
INDIVIDUALS,
Appellants,
vs.
LA FUENTE, INC., AN ACTIVE
CORPORATION,
Respondent.

No. 78078

FILED

FEB 25 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Appeal from a district court order granting summary judgment
in a minimum wage class action. Eighth Judicial District Court, Clark
County; Kerry Louise Earley, Judge.

Reversed and remanded.

Bighorn Law and Kimball J. Jones, Las Vegas; Rusing Lopez & Lizardi,
PLLC, and Michael J. Rusing, Tucson, Arizona,
for Appellants.

Hartwell Thalacker, Ltd., and Doreen Spears Hartwell, Las Vegas;
Schulten Ward Turner & Weiss, LLP, and Dean R. Fuchs, Atlanta, Georgia,
for Respondent.

BEFORE THE COURT EN BANC.

OPINION

By the Court, PICKERING, J.:

This case is a sequel to *Terry v. Sapphire Gentlemen's Club*, which adopted the federal economic realities test to guide courts in determining whether an employment relationship exists in the context of Nevada's statutory minimum wage laws, NRS Chapter 608. 130 Nev. 879, 888, 336 P.3d 951, 958 (2014). Applying that test to the provisions of NRS Chapter 608 as they then existed, this court held that performers at the Sapphire men's club were employees, not independent contractors, and accordingly entitled to statutory minimum wages under that chapter. The Legislature subsequently enacted NRS 608.0155, which established "for the purposes of [NRS Chapter 608]" a conclusive presumption of independent contractor status for certain workers meeting specified criteria, regardless of whether those workers might otherwise qualify as employees under *Terry* and the economic realities test, thus expanding the ranks of independent contractors and excluding previously qualifying workers from statutory minimum wage protections.

In this appeal, appellants (Doe Dancers) similarly argue they are in fact employees, not independent contractors, but this time within the context of Article 15, Section 16 of the Nevada Constitution, the Minimum Wage Amendment (MWA), rather than NRS Chapter 608. The extent of the MWA's reach is a question *Terry* left open, *see* 130 Nev. at 883, 336 P.3d at 955, and to which NRS 608.0155's application is less obvious. Accordingly, to resolve Doe Dancers' appeal, we must again interpret the term "employee," this time pursuant to the MWA, apply that interpretation to the circumstances at issue here, and then determine whether NRS 608.0155's statutory expansion of the definition of independent contractor—

which is the opposite side of employee on the relational coin, *see, e.g.*, Debra T. Landis, Annotation, *Determination of "Independent Contractor" and "Employee" Status for Purposes of § 3(3)(1) of the Fair Labor Standards Act (29 USCS § 203(e)(1))*, 51 A.L.R. Fed. 702 (1981) (collecting cases)—excludes workers who would otherwise be MWA employees from its protections. We hold that the same economic realities test we applied in the context of statutory minimum wage claims in *Terry* applies to the constitutional MWA claims at issue here; that the Doe Dancers are employees, not independent contractors, under that test; and that NRS 608.0155 does not abrogate the constitutional protections to which they are therefore entitled. Thus, the district court erred by granting summary judgment in favor of the respondent and against the Doe Dancers, and we reverse and remand.

I.

Each of the Doe Dancers has, at some point, performed at Cheetahs Lounge, a men's club owned by respondent La Fuente, Inc. (Cheetahs). Each Doe Dancer performed at the venue for a different period of time and with differing experience. But, according to testimony by Cheetahs' operations manager, Diana Ponterelli, Cheetahs permitted the Doe Dancers to dance there based on certain shared qualifications—specifically, they showed up with a valid sheriff's card, state ID, work license, and costume, were not "trashed," and were "standing up." Cheetahs did not require that any Doe Dancer have prior dance training. Cheetahs did not check any Doe Dancer's references or employment history. Cheetahs did not ask that any Doe Dancer audition—not even "just to turn in circles"—before Cheetahs gave her¹ a shift.

¹It appears that the Doe Dancers all identify as female; thus, we use feminine pronouns.

The moment Doe Dancers' respective shifts began, however, Cheetahs' tone changed. The club imposed controls on Doe Dancers beginning at the door—requiring that they pay a “house fee” at entry as well as an “off stage fee,” or else check-in with the D.J. for on-stage rotation. Myriad written and posted limitations on the Doe Dancers' costumes and performances met them inside the club—setting a minimum heel height of two inches, grip strips mandatory, prohibiting “clog type” shoes, “street clothes,” “cotton material,” “tears in your stockings or outfits,” “glitter and body oil,” requiring graceful stage exits and defining appropriate body placement during performances and while interacting with customers. And the posted rules carried on, addressing dancer manners (“Keep feet off the furniture”) and etiquette (“Working together is very important. PLEASE GIVE [other dancers] THE SAME RESPECT THAT YOU WOULD LIKE THEM TO GIVE YOU.”); social interactions (“Do not walk up to a customer and just ask him for a dance, talk to them, get to know him a little . . . leave a great and lasting impression. Sit at least one song with them first.”); personal hygiene (“A MUST”); wound care (“ALL CUTS TO BE COVERED WITH . . . BAND-AIDS.”); transportation (“CABS AND YOUR RIDE WILL PICK YOU UP AT THE DRESSING ROOM DOOR ONLY.” “Anyone giving you a ride . . . is not allowed in the club during your shift.”); and parking (“ALL NIGHT TIME ENTERTAINERS—AFTER 7PM WILL VALET PARK OR HAND KEYS OVER TO HOUSE MOM.”). The posted rules further spiral into the sort of minutia likely familiar to many who have worked in a workplace (“All items [in the refrigerator] out by the end of [the] shift.” “You are responsible for all your own things.” “No food or drink is to be kept in your locker . . . BUGS!!!”); constraints perhaps somewhat less familiar, but that still may be common in certain service

sectors ("NO SMOKING OR GUM CHEWING ON THE FLOOR." "No CELL phones on the floor." "No purses allowed on the floor." "Put all your belongings in [your] locker, not under the counter."); and ultimately singular and seemingly intrusive limitations ("LET MANAGER KNOW OF [YOUR PRESCRIPTION] MEDICATIONS." "NO GLASS in the dressing room. NO PLASTIC CUPS on the dressing room floor." "DO NOT LEAVE YOUR SHIFT WITHOU[T] CHECKING OUT WITH THE MANAGER AND THE DJ." "No boyfriends, husbands, or lovers allowed in the club while you are [w]orking." "Ask if you can put something in [the refrigerator]." "YOU WILL BE CHECKED ON ALL SHIFTS FOR BEING INTOXICATED BY HOUSEMOM." "You MUST NOT refuse a drink or shooter from a customer." "You MUST change costumes at least three times during a shift.").

The record does not allow for misunderstanding---Ponterelli's testimony and the management log book clearly demonstrate that these rules were enforced as posted. Indeed, even above and beyond those posted rules, Cheetahs seems to have set less tangible standards for the Doe Dancers, with the log book indicating that multiple performers were prohibited from dancing at the club or otherwise disciplined for having a "bad attitude," "offend[ing] . . . male customers," being "total ghetto," acting like a "prima donna," being "very disrespectful to [management]," or having a "poor, rude, nasty attitude toward [staff]." And Ponterelli similarly testified that a central characteristic shared by prospective performers who Cheetahs ultimately did not allow to dance was a perceived "attitude" problem.

Before dancing at Cheetahs, each Doe Dancer was required to sign a "Dancer Performer's Lease" agreement with Cheetahs. Under these

agreements (1) Cheetahs purports to "lease" to Performer and Performer leases from [Cheetahs] the non-exclusive right during normal business hours to use the stage area and certain other portions of [Cheetahs] premises for the performing of live nude and/or semi-nude entertainment; and (2) any employment relationship is "SPECIFICALLY DISAVOWED". Nothing in these agreements diminishes the control that Cheetahs reserved the right to exert through its posted rules and commentary. To the contrary, the form of lease agreements the dancers signed specified that Cheetahs "shall have the right to impose rules and regulations upon the use of [Cheetahs] by [a performer] . . . in its sole and absolute discretion." (Emphasis added.)

Despite their having contractually "disavow[ed]" any employment relationship with Cheetahs in the Lease agreement, the Doe Dancers claimed they were, in fact, employees within the legal meaning of the term. They accordingly demanded minimum wages from the club, which Cheetahs refused to pay because it considered them independent contractors. As a result, the Doe Dancers brought the underlying class action, in which the Doe Dancers and Cheetahs filed cross motions for summary judgment. The Doe Dancers sought a ruling that they were employees rather than independent contractors, as a matter of law, and entitled to minimum wages under both NRS Chapter 608 and the MWA; Cheetahs sought a ruling that the Doe Dancers were conclusively presumed to be independent contractors pursuant to NRS 608.0155's expanded definition of the phrase, and therefore not employees or eligible for the minimum wages demanded. The district court concluded that NRS 608.0155 applied to the Doe Dancers, rendering them independent contractors ineligible for minimum wages under both NRS Chapter 608 and

the MWA, and granted the Doe Dancers' motion for summary judgment while denying the Doe Dancers' cross-motion. This appeal followed.

As noted in *Terry*, we determined that certain performers laboring under circumstances largely similar to those of the Doe Dancers were "employees" within the meaning of NRS Chapter 608 (governing "Compensation, Wages and Hours"), not independent contractors as Sapphire had classified them, such that they were entitled to the state statutory minimum wage. See 130 Nev. at 892, 336 P.3d at 960. And in the district court, the Doe Dancers demanded both statutory minimum wages in accordance with *Terry* and constitutional minimum wages pursuant to the MWA, the proper application of which *Terry* left unanswered. See 130 Nev. at 883, 336 P.3d at 955. On appeal, however, the Doe Dancers have abandoned their statute-based claims, instead relying solely on the constitutional protections the MWA extends to employees. This raises, as a question of first impression, the extent of the MWA's reach. And because the district court denied the Doe Dancers' motion for summary judgment and granted Cheetahs' on the ground that NRS 608.0155, which the Legislature enacted in 2015, applied to negate both categories of the Doe Dancers' claims, the resolution of this appeal likewise involves questions of the constitutional supremacy of the MWA, which was first approved by voters in the 2004 general election. We examine all of these questions de novo. *W. Cab Co. v. Eighth Judicial Dist. Court*, 133 Nev. 65, 73, 390 P.3d 662, 670 (2017) (reviewing questions of constitutional interpretation de novo); *Torres v. Goodyear Tire & Rubber Co.*, 130 Nev. 22, 25, 317 P.3d 828, 830 (2014) (reviewing questions of statutory construction de novo); *Wood v.*

Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing grant of summary judgment de novo).

A.

If the Doe Dancers do not qualify for MWA protections, the constitutional assessment of NRS 608.0155 in Part III, *infra*, would not need to follow. The threshold question, then, is the proper interpretation of the MWA. The MWA speaks in sweeping terms. It mandates that “[e]ach employer shall pay a wage to each employee.” And it defines “employee” broadly, with only the narrowest of exceptions: “Employee’ means *any person who is employed by an employer . . .* but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days.” Nev. Const. art. 15, § 16(C) (emphasis added). Though it borders on rote to do so at this point, we note that the definition’s text is not alone sufficient to guide our interpretation. *Cf. Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007) (noting that where a law’s language is “plain and its meaning clear, the courts will apply that plain language”). Nor does the surrounding language place it in meaningful explanatory context. Nev. Const. art. 15, § 16(C) (defining an employer as any “entity that may employ individuals or enter into contracts of employment”). Indeed, we previously assessed subsection C as “tautological,” *Terry*, 130 Nev. at 884, 336 P.3d at 955, which assessment still holds. Accordingly, we must look to external aids of interpretation. *See Orion Portfolio Servs. 2, LLC v. County of Clark*, 126 Nev. 397, 402, 245 P.3d 527, 531 (2010).

This exercise highlights the extent to which *Terry*’s echoes resound here—the definition of employee in *Terry* was similarly ambiguous,

see NRS 608.010 (defining employees as “persons in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed), and its relevant context was likewise unhelpful. *See Terry*, 130 Nev. at 883-84, 336 P.3d at 955 (discussing the MWA and finding it not helpful to the statute’s textual interpretation). Accordingly, in *Terry*, despite expressly noting the divergence between the language of NRS 608.010 and 29 U.S.C. § 203(e)(1) of the Fair Labor Standards Act (FLSA), we looked to federal case law interpreting the FLSA to understand the former, recognizing that “the Legislature has long relied on the federal minimum wage law to lay a foundation of worker protections that this State could build upon.” 130 Nev. at 884, 336 P.3d at 955. But in the context of the MWA, federal FLSA law carries even greater persuasive weight, given that the relevant language of the MWA (defining employee as “any person who is employed by an employer,” Nev. Const. art. 15, § 16(C)) so closely mirrors the FLSA 29 U.S.C. § 203(e)(1) (defining employee as “any individual employed by an employer”). *Amazon.com, Inc. v. Integrity Staffing Sols., Inc.*, 905 F.3d 387, 398 (6th Cir. 2018) (stating that as a general proposition, “when interpreting state provisions that have analogous federal counterparts, Nevada courts look to federal law unless the state statutory language is ‘materially different’ from or inconsistent with federal law” (internal quotations omitted)); *see also Middleton v. State*, 114 Nev. 1089, 1107 n.4, 968 P.2d 296, 309 n.4 (1998) (using federal law to interpret state statute because the two were “largely equivalent”).

The FLSA’s definition of employment predates the MWA by decades, and courts’ applications of the “economic realities test” to that language have been “nearly ubiquitous” during that period. *Campusano v.*

Lusitano Constr. LLC, 56 A.3d 303, 308 (Md. Ct. Spec. App. 2012); *see also* Fair Labor Standards Act of 1938, Pub. L. No. 718, § 3, 52 Stat. 1060, 1060 (1938) (enacting the federal definition); *Goldberg v. Whitaker House Coop., Inc.*, 366 U.S. 28, 33 (1961) (applying the economic realities test). In light of this, the definition of employee found in the FLSA and mirrored by the MWA “has acquired . . . a technical legal sense” that informs its meaning. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 324 (2012); *cf. Nev. Att’y for Injured Workers v. Nev. Self-Insurers Ass’n*, 126 Nev. 74, 84, 225 P.3d 1265, 1271 (2010) (presuming “that the Legislature enacted the statute with full knowledge of existing statutes relating to the same subject” (internal quotations omitted)). This canon of construction promotes legal stability; put differently, the members of the bar practicing in this field of law should be able to “assume that the [same] term bears the same meaning,” absent some clear indicia to the contrary. Scalia & Garner, *supra*, at 324. And, nothing here signals against application of the well-established proposition that “if a word [or phrase] is obviously transplanted from another legal source, . . . it brings the old soil with it.” Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947); *cf. Ballots; Labor Comm’r; Wages*, 05-04 Op. Nev. Att’y Gen. 18, 18 (2005) (stating that in this context “the voters should be presumed to know the state of the law in existence related to the subject upon which they vote” (citing *Bounties for Destruction of Predatory Animals*, 34-153 Op. Nev. Att’y Gen. (1934))).

This tracks with what we have previously stated regarding the breadth of the MWA’s terms, which establish a protective wage floor for workers in this state. *See, e.g., Terry*, 130 Nev. at 884, 336 P.3d at 955 (noting that the MWA “signal[s] this state’s voters’ wish that more, not

fewer, persons would receive minimum wage protections.” *Thomas v. New Yellow Cab Corp.*, 130 Nev. 484, 488, 327 P.3d 518, 521 (2014) (noting the MWA’s “broad definition of employee and very specific exemptions”). Relatedly, as a practical matter, the MWA can only offer protections equal to or broader than the FLSA’s. See *Jane Roe Dancer I-VII v. Golden Carr, Ltd.*, 124 Nev. 28, 33, 176 P.3d 271, 274 (2008) (citing FLSA savings clause as evidence of congressional intent “to leave room for state law to establish higher minimum wages than those set by the FLSA” (emphasis added)); see also 123 Am. Jur. Trials 1, § 7 (2012) (noting that “[t]he FLSA sets the lowest bar for compliance and permits states and other jurisdictions to enact laws that are more rigorous”). And, as we have previously noted, “a broader or more comprehensive coverage of employees” than that provided under the economic realities test “would be difficult to frame.” *Terry*, 130 Nev. at 886, 336 P.3d at 956 (quoting *United States v. Rosenwasser*, 323 U.S. 360, 362 (1945)). Nor would an *ad hoc* judicial conjuring of some test with an identical reach be advisable, particularly given the desirability of stability discussed above and Cheetahs’ failure to cogently argue for any such alternative. *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 & n.38, 130 P.3d 1280, 1288 & n.38 (2006).

In sum, we hold that the federal economic realities test applies to define the scope of the MWA’s constitutional definition of employee.

B.

Because the economic realities test is based on a totality of circumstances, courts have used a range of factors in their analyses of the same. See *Terry*, 130 Nev. at 888-89, 336 P.3d at 958. There are six that “courts nearly universally consider”

- 1) the degree of the alleged employer's right to control the manner in which the work is to be performed;
- 2) the alleged employee's opportunity for profit or loss depending upon his managerial skill;
- 3) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers;
- 4) whether the service rendered requires a special skill;
- 5) the degree of permanence of the working relationship; and
- 6) whether the service rendered is an integral part of the alleged employer's business.

Id. at 888-89, 336 P.3d at 958. Applying these factors to find an employment relationship in *Terry*, we noted that our holding was, at that time, consistent with "the great weight of authority" using the economic realities test, which had "almost 'without exception . . . found an employment relationship and required . . . nightclub[s] to pay [their] dancers a minimum wage.'" *Id.* at 892, 336 P.3d at 960 (quoting *Clinicy v. Galardi S. Enters., Inc.*, 808 F. Supp. 2d 1326, 1343 (N.D. Ga. 2011) (collecting cases)). And it remains true that "courts continue to trend . . . to allowing exotic dancers coverage under [the] FLSA" and the corresponding economic realities test as employees, rather than excluding them from minimum wage protections as independent contractors. J. Dalton Person, *Exotic Dancers & FLSA: Are Strippers Employees?*, 69 Ark. L. Rev. 173, 179 (2016) (collecting cases).²

²See also *Verma v. 3001 Castor, Inc.*, 937 F.3d 221, 232 (3d Cir. 2019) (dancers were employees under the economic realities test); *McFeeley v. Jackson St. Entm't, LLC*, 47 F. Supp. 3d 260, 273-75 (D. Md. 2014), *aff'd*, 825 F.3d 235 (4th Cir. 2016) (accord); *Gilbo v. Agment LLC*, No. 1:19-cv-00767, 2020 WL 759548, at *7 (N.D. Ohio Feb. 14, 2020) (accord); *Hurst v.*

That said, exotic dancers are not, as a class, categorically employees entitled to constitutional minimum wages under the MWA, as opposed to independent contractors. Instead, that question must be decided case by case, with reference to the particular circumstances of the relationship involved.

Here, the material facts surrounding the Doe Dancers' work for Cheetahs are undisputed. The question of their employment status is therefore one of law. *Terry*, 130 Nev. at 889, 336 P.3d at 958; see also *Purdham v. Fairfax Cty. Sch. Bd.*, 637 F.3d 421, 428 (4th Cir. 2011) (noting that the question of whether a worker is an employee under FLSA is one of law); *Baker v. Flint Eng'g & Constr. Co.*, 137 F.3d 1436, 1441 (10th Cir. 1998) (accord); *Donovan v. Telco, Inc.*, 642 F.2d 141, 143 n.4 (5th Cir. 1981) (accord), to which de novo review applies. *Terry*, 130 Nev. at 889, 336 P.3d at 958.

With regard to the first factor of the economic realities test, that is, Cheetahs' "right to control the manner in which" the Doe Dancers performed, the record does not evince any meaningful difference between the circumstances here and those in *Terry* that would weigh against a finding of employment. Both here and in *Terry*, the clubs set various rules governing dancers' appearances, performances, and on-shift conduct. See

Youngelson, 354 F. Supp. 3d 1362, 1378 (N.D. Ga. 2019) (accord); *Shaw v. Set Enters., Inc.*, 241 F. Supp. 3d 1318, 1323-27 (S.D. Fla. 2017) (accord); *Mason v. Fantasy, LLC*, No. 13-cv-02020-EM-KLM, 2015 WL 4512327, at *11 (D. Colo. July 27, 2015) (accord); *cf. Embry v. 4745 Second Ave., Ltd.*, No. 419-cv-00305-JA-I-RAW, 2019 WL 8876264, at *2 (S.D. Iowa Nov. 13, 2019) (denying club's motion to dismiss because "the facts pleaded, accepted as true, are such that a finder of fact could reasonably infer that the plaintiff and the other dancers were employees, rather than independent contractors").

Terry, 130 Nev. at 890, 336 P.3d at 959 (discussing control element of economic realities test). If anything, Cheetahs reserved (and seemingly exercised) a more extensive right to control its dancers than the club in *Terry*. For instance, as detailed at the outset, Cheetahs' posted rules apparently required that dancers demonstrate a "respectable" attitude, not just toward customers, but toward staff and fellow performers; make a set number of costume changes; wear a specific number of G-strings; eschew costumes made of certain materials; not approach customers at certain locations in the club; cover cuts with Band-Aids; remove personal items from the refrigerator at the end of each shift; keep their belongings in lockers (secured with a "Cheetah's] lock" to be purchased from Cheetahs); and keep cups off the dressing room floor. Indeed, the record supports that Cheetahs' expansive control began at a dancer's entry—where the club apparently required that she relinquish her car keys—and continued until her exit—where, after checking out with the DJ and floor manager, she seems to have needed to take and pass a breathalyzer test in order to have those keys returned.

As to the second factor of the economic realities test, it appears that the Doe Dancers' respective opportunities for profit or loss were not meaningfully tethered to their managerial skills. This is because, markedly similar to the club in *Terry*, Cheetahs has established "a framework of false autonomy" that gives performers "a coercive "choice" between accruing debt to the club or redrawing personal boundaries of consent and bodily integrity." 130 Nev. at 889, 336 P.3d at 959 (quoting Sherrine Alemzadeh, *Baring Inequality: Revisiting the Legalization Debate Through the Lens of Strippers' Rights*, 19 Mich. J. Gender & L. 339, 347 (2013)). Like the club in *Terry*, Cheetahs set the prices for both the house fee and dances; required

the Doe Dancers to be in rotation for stage dances for a certain number of songs, unless they paid an off-stage fee; demanded a cut from any earned "funny money"; and aggressively "encourage[d]" the Doe Dancers to tip out other employees. And, if a Cheetahs' dancer wished to leave before her six-hour shift expired—if, for example, it was an exceptionally slow night at the club—her house fee was higher. Accordingly, here, as in *Terry*, any boundaries the Doe Dancers set with a customer or the club—by, for instance, refusing to accept "funny money" or requesting permission to leave early—risked them ultimately "taking a net loss." *Terry*, 130 Nev. at 890, 336 P.3d at 959.

With regard to the third factor, the Doe Dancers' respective investments in "equipment or materials" were, as the performers in *Terry*, seemingly limited to their appearances and costumes. Cheetahs, not the Doe Dancers, invested in the club's marketing. Cheetahs, not the Doe Dancers, financed club operations and repairs. Cheetahs, not the Doe Dancers, managed payroll. Cheetahs, not the Doe Dancers, obtained (and ran) the club's only credit card machine. Cheetahs, not the Doe Dancers, paid rent. Cheetahs, not the Doe Dancers, invested in the club's "ambiance, layout, [and] decor." And because the Doe Dancers invested nothing, save their physical exertion, makeup, and costumes, any reduction in their earnings—due to their dancing on, say, a holiday like Father's Day (when club attendance is, apparently, light)—is therefore the loss of wages due an employee, "not of [the] investment" of an independent contractor. *Sec'y of Labor, U.S. Dep't of Labor v. Lauritzen*, 835 F.2d 1529, 1536 (7th Cir. 1987).

On the fourth factor of the economic realities test, "whether the service rendered requires a special skill," we tread carefully, having no wish to disparage the Doe Dancers or minimize the physical abilities that their

work requires. However, their particular talents and endurance on their heel-clad feet “do not change the nature of their employment relationship with [Cheetahs].” *Id.* at 1537. The question, as noted in *Terry*, is one of the presence and requirement of the sort of specialized skill common to independent contractors; that is, “whether their work requires the initiative demonstrated by one in business for himself or herself.” 130 Nev. at 891, 336 P.3d at 959. And witnesses’ testimony regarding the near absence of *any* requirements for performing at Cheetahs—aside from, perhaps, a compliant “attitude”—would seem to entirely negate this.

With regard to the fifth factor, there appears little permanency in the relationship between the Doe Dancers and Cheetahs—the manager’s log book reflects the relatively frequent cessation of dancers’ relationships with the club, sometimes without explanation—and the testimony of Ponterelli and various Doe Dancers suggests that the “length and the regularity” of the Doe Dancers’ work was, at least to some degree, of their own choosing. See *Saleemi v. Corp. Transp. Grp., Ltd.*, 854 F.3d 131, 147 (2d Cir. 2017) (looking to the length and regularity of certain workers’ relationship with a business in ruling on this factor). But even work of relatively short durational periods can qualify as employment rather than independent contracting. See *Lauritzen*, 835 F.2d at 1537-38 (holding that seasonal pickle-harvest pickers were employees not independent contractors). And, while schedule variability may, in some cases, serve as an indicator of employment status, it is not dispositive. See *Keller v. Miri Microsystems LLC*, 781 F.3d 799, 808 (6th Cir. 2015) (noting that “workers have been deemed employees where the lack of permanence is due to operational characteristics intrinsic to the industry rather than to the workers’ own business initiative” (internal quotations omitted)).

Instead, “the ultimate inquiry is the nature of the performers’ dependence on the club.” *Terry*, 130 Nev. at 891, 336 P.3d at 960. Accordingly, flexibility in scheduling is only of persuasive import where it affords the worker in question with entrepreneurial opportunities—“when an individual is able to draw income through work for others, he is less economically dependent on his putative employer.” *Saleem*, 854 F.3d at 141. And here, particularly given Cheetahs’ witnesses’ testimony generally dismissing the qualifications of the Doe Dancers, we are simply not persuaded that their theoretical scheduling flexibility is in any real sense “the same as [the] true economic independence” that might exist in the case of an independent contractor. *McLaughlin v. Seafood, Inc.*, 861 F.2d 450, 452-53 (5th Cir. 1988).

The sixth and final factor—whether the Doe Dancers’ work is “integral” to Cheetahs’ business—requires little analysis. As Ponterelli acknowledged, a business such as Cheetahs “can’t be a men’s club without exotic dancers.” Common sense leads us to agree, and Cheetahs’ briefing appears to concede the point. Accordingly, the weight of the economic realities test factors support that the Doe Dancers are employees, as opposed to independent contractors, thereunder.

III.

This leaves only the question of whether NRS 608.0155’s definition of independent contractor operates to exclude the Doe Dancers from these constitutional base-line protections by narrowing the scope of which workers the MWA would otherwise cover. Enacted in 2015, following *Terry*, NRS 608.0155 states in relevant part,

[F]or the purposes of this chapter, a person is conclusively presumed to be an independent contractor if:

(a) Unless the person is a foreign national who is legally present in the United States, the person possesses or has applied for an employer identification number or social security number or has filed an income tax return for a business or earnings from self-employment with the Internal Revenue Service in the previous year;

(b) The person is required by the contract with the principal to hold any necessary state business license or local business license and to maintain any necessary occupational license, insurance or bonding in order to operate in this State; and

(c) The person satisfies three or more of [certain additional criteria]."

NRS 608.0155.³

³The list of potential criteria includes

(1) Notwithstanding the exercise of any control necessary to comply with any statutory, regulatory or contractual obligations, the person has control and discretion over the means and manner of the performance of any work and the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the principal in the contract.

(2) Except for an agreement with the principal relating to the completion schedule, range of work hours or, if the work contracted for is entertainment, the time such entertainment is to be presented, the person has control over the time the work is performed.

(3) The person is not required to work exclusively for one principal unless:

Cheetahs' argument that its interpretation of NRS 608.0155—that is, its reading the statutory expansion of the class of independent contractors as applicable to the MWA's definition of employee—does not create any conflict therewith is puzzling. Admittedly, NRS 608.0155 is framed in terms of who is an "independent contractor," but it operates to distinguish "independent contractors" from "employees," which concepts are mutually exclusive. See, e.g., Landis, 51 A.L.R. Fed. at 702 (collecting cases). Indeed, to say that NRS 608.0155 does not alter the MWA's definition of employee would likewise be to say that NRS 608.0155 does not affect which workers are employees under the MWA; or, put differently, that NRS 608.0155 does not exclude from the MWA's coverage any worker

(I) A law, regulation or ordinance prohibits the person from providing services to more than one principal; or

(II) The person has entered into a written contract to provide services to only one principal for a limited period.

(4) The person is free to hire employees to assist with the work.

(5) The person contributes a substantial investment of capital in the business of the person, including, without limitation, the

(I) Purchase or lease of ordinary tools, material and equipment regardless of source;

(II) Obtaining of a license or other permission from the principal to access any work space of the principal to perform the work for which the person was engaged; and

(III) Lease of any work space from the principal required to perform the work for which the person was engaged.

otherwise covered by the constitutional definition of employee. And this is plainly not Cheetahs' position, all semantics aside. Thus, the following analysis assumes without deciding that the Doe Dancers fall under this conclusive statutory presumption, which—if it does apply to MWA claims—would negate their constitutional minimum wage entitlement.

Beginning with the text of the statute itself, see *Banks v. Sunrise Hosp.*, 120 Nev. 822, 846, 102 P.3d 52, 68 (2004), and the statutory framework in which it falls, see *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007), there is merit in Doe Dancers' argument that NRS 608.0155 only purports to apply "for the purposes of [NRS Chapter 608]"; that is, by its terms, the section appears to limit its reach to the statutory chapter in which it sits. Cheetahs, however, points to alternative language from Section 7 of the bill that enacted NRS 608.0155 (S.B. 224), stating that the bill applies "to an action or proceeding to recover unpaid wages pursuant to [the MWA] or NRS 608.250 to 608.290, inclusive." 2015 Nev. Stat., ch. 325, § 7, at 1744 (emphasis added).⁴ Adding an additional wrinkle, and perhaps supporting Cheetahs' position, the Legislature also implicitly referenced both NRS Chapter 608 and the MWA in NRS 608.255—stating that independent contractors are not entitled to the minimum wage "[f]or the purposes of this chapter and any other statutory or constitutional provision governing the minimum wage paid to an employee." However, these sections are possible to read harmoniously—as its language plainly states, the definition of independent contractor in NRS 608.0155 (or Section 1 of

⁴Though this language was adopted into our state's official laws but not codified in the NRS, it holds the same persuasive value. See *Halverson v. Sec'y of State*, 124 Nev. 484, 486-87, 186 P.3d 893, 895-96 (2008) (holding that "while not enacted [into the NRS], the [language in question] is law, as it was enacted in the official Statutes of Nevada").

S.B. 224) applies only to NRS Chapter 608 claims, while Section 5 of S.B. 224 and NRS 608.255 merely serve to reaffirm that independent contractors are, generally, not eligible for minimum wages, whatever the source of authority supposedly justifying them. *See Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 179 P.3d 556, 560, 124 Nev. 193, 200-01 (2008) (noting that “a statute’s provisions should be read as a whole . . . and, when possible, any conflict is harmonized”). Moreover, even if these sections were truly irreconcilable, the general/specific canon—instructing that when two statutes conflict, “the more specific statute will take precedence, and is construed as an exception to the more general statute,” *Williams v. State, Dep’t of Corr.*, 133 Nev. 594, 601, 402 P.3d 1260, 1265 (2017) (citation omitted)—would counsel the same outcome.

Indeed, the Legislature’s reference to *both* NRS Chapter 608 and the MWA in NRS 608.255 and the introductory language of Section 5 of S.B. 224 supports this proffered reading. To wit, the Legislature plainly knew how to word laws to expressly reach claims brought under either NRS Chapter 608 or the MWA, and despite this, NRS 608.0155 states that it applies only “for the purposes of this chapter.”⁵ We are therefore particularly loath to read-in the sort of express language contained in NRS 608.255 and Section 5 of S.B. 224 to NRS 608.0155—“It is not [a court’s] function or within [a court’s] power to enlarge or improve or change the law.” Elihu Root, *The Importance of an Independent Judiciary*, 72 *Independent* 704, 704 (1912). A court has only the “right and the duty . . . to interpret the [legislative] document” not “to rewrite the words.” Edward H.

⁵Further confirming this is the introductory language to Section 7 of S.B. 224, which likewise included specific references to both the MWA and NRS Chapter 608. 2015 Nev. Stat., ch. 325, § 5, at 1744.

Levi, *The Nature of Judicial Reasoning*, 32 U. Chi. L. Rev. 395, 404 (1965); cf. *Zenor v. State, Dep't of Transp.*, 134 Nev. 109, 111, 412 P.3d 28, 30 (2018) (reasoning that the Legislature's omission of language was intentional).

Further supporting this reading is the principle that "when statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems." *Degum v. English Judicial Dist. Court*, 134 Nev. 330, 333, 419 P.3d 136, 139 (2018) (internal quotations omitted). Integrally tied into the application of this canon here is that "constitutional supremacy prevents the Nevada Legislature from creating exceptions to the rights and privileges protected by Nevada's Constitution." *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. 484, 489, 327 P.3d 518, 522 (2014). Indeed, in interpreting the MWA in *Thomas v. Nevada Yellow Cab Corp.*, we have previously reasoned that "[i]f the Legislature could change the Constitution by ordinary enactment, no longer would the Constitution be superior paramount law, unchangeable by ordinary means. It would be on a level with ordinary legislative acts, and, like other acts . . . alterable when the legislature shall please to alter it." *Id.* at 489, 327 P.3d at 522 (alteration in original) (internal quotations omitted).

Thomas's reasoning is directly on point here—as we have indicated, the MWA provides broader minimum wage coverage than that offered by NRS Chapter 608. See *Thomas*, 130 Nev. at 488, 327 P.3d at 521 (noting that the MWA "expressly and broadly defines employee"); *Terry*, 130 Nev. at 884, 336 P.3d at 955 (noting that the MWA reflects "voters' wish that more, not fewer, persons would receive minimum wage protections"). And rather than, say, lobbying for legislative action, Nevada voters took it upon themselves to propose and adopt an amendment to the "superior

constitutional law of this state via "extraordinary means." See *Thomas*, 130 Nev. at 489, 327 P.3d at 522 (internal quotations omitted); see also John Dinan, *State Constitutional Amendment Processes and the Safeguards of American Federalism*, 115 Penn St. L. Rev. 1007, 1029 (2011) (noting that "where legislatures were not supportive [of increasing the minimum wage beyond the federal level], citizen-initiated statutes could be relied on to secure these policies, as occurred in several states," including Nevada). Given the MWA's supremacy, and the extraordinary measures the people of this state undertook to enact it, it only follows that NRS 608.0155 should be construed to accord with the MWA, not vice versa. *Thomas*, 130 Nev. at 489, 327 P.3d at 521-22. Indeed, "[a]ccepting [Cheetahs'] position 'would require the untenable ruling . . . that the constitution is presumed to be legal and will be upheld unless in conflict with the provisions of a statute.'" *Thomas*, 130 Nev. at 489, 327 P.3d at 521-22 (quoting *Strickland v. Waymire*, 126 Nev. 230, 241, 235 P.3d 605, 613 (2010)). Such a holding would run afoul of fundamental democratic principles and the people's apparent attempt to "insulate minimum-wage increases from the possibility of future legislative reversal." Dinan, *supra*, at 1019.

Additionally, accepting Cheetahs' reading of NRS 608.0155 would raise potential separation of powers questions—it is "[a] well-established tenet of our legal system . . . that the judiciary is endowed with the duty of constitutional interpretation[,] not the Legislature. *Nevadans for Nev. v. Beers*, 122 Nev. 930, 943 n.20, 142 P.3d 339, 347 n.20 (2006). Simply put, it is not clear that the Legislature has the constitutional power to impose any particular interpretation of the term employee in the MWA upon this court by legislation—which, as discussed above, Cheetahs' reading of NRS 608.0155 would necessarily do.

Separate and apart from these principles, Cheetahs' understanding of the MWA "as allowing the Legislature to provide for additional exceptions to Nevada's constitutional minimum wage disregards the canon of construction '*expressio unius est exclusio alterius*,' the expression of one thing is the exclusion of another." *Thomas*, 130 Nev. at 488, 327 P.3d at 521 (quoting *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967)). As *Thomas* held, the MWA "expressly and broadly defines employee, exempting only certain groups" not at issue (those under 18, employed by a "nonprofit organization for after school or summer employment or as a trainee" for 90 days or less). 130 Nev. at 488, 327 P.3d at 521. Accordingly, "the text necessarily implies that all employees *not* exempted by the Amendment . . . must be paid the minimum wage set out in the Amendment." *Id.* (emphasis added). Put differently, "the MWA's broad definition of employee and very specific exemptions necessarily and directly conflict with the [purported] legislative exception" Cheetahs proposes here. *Id.*

All this said, in *Thomas* we relied in part on the doctrine of implied repeal—that later-in-time legislation "is controlling over [a] statute that addresses the same issue." 130 Nev. at 489, 327 P.3d at 521 (internal quotations omitted). In theory, this principle could weigh against the Doe Dancers because NRS 608.0155 post-dates the MWA's enactment. But even crediting the doctrine in this context, the Legislature lacked the constitutional power to partially repeal the MWA's broad definition for the weighty reasons discussed above—the Legislature cannot by later-enacted statute abridge a right that the constitution guarantees. *See id.* at 489, 327 P.3d at 522.

Accordingly, NRS 608.0155 does not, and indeed could not, remove from MWA protections employer-employee relationships the constitutional provision protects. And because, as established above, the Doe Dancers are otherwise employees within the MWA's meaning, the district court erred by granting summary judgment in favor of Cheetahs and against the Doe Dancers on that point. We therefore reverse the district court's summary judgment and remand this matter to the district court for proceedings consistent with this opinion.

Pickering, J.
Pickering

We concur:

Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Cadish, J.
Cadish

Silver, J.
Silver

Herndon, J.
Herndon

STIGLICH, J., concurring:

I agree that the MWA incorporates the economic realities test, which “examines the totality of the circumstances and determines whether, as a matter of economic reality, workers depend upon the business to which they render service for the opportunity to work.” *See Terry v. Sapphire Gentlemen’s Club*, 130 Nev. 879, 886, 336 P.3d 951, 956 (2014) (emphasis omitted). Nevada’s voters enacted the MWA so that “more, not fewer, persons would receive minimum wage protections” and used broad language to that effect which mirrors the language in the Fair Labor Standards Act. *See id.* at 884, 336 P.3d at 955. I also agree that the plaintiffs in this case satisfy the economic realities test and are therefore entitled to the protections of the MWA.¹

I write separately because I do not agree that “by its terms, [NRS 608.0155] appears to limit its reach to the statutory chapter in which it sits.” Majority opinion *ante* at 20. Although NRS 608.0155 applies only “for the purposes of this chapter,” that means it applies for the purposes of NRS 608.255(2), which states that independent contractors are not subject to the provisions of the MWA. These two sections were enacted as part of a single, narrowly focused legislative scheme. 2015 Nev. Stat. ch. 325, at

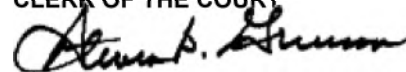
¹Although I agree with the majority that the plaintiffs are employees for MWA purposes, I do not necessarily find all of the same facts persuasive. For example, I do not think the requirements that dancers be “respectable,” “cover cuts with Band-Aids,” or “keep their belongings in lockers” are particularly strong indicia of the type of control that evidences an employment relationship. Majority opinion *ante* at 14. In my view, Cheetahs’ control over prices, the dancers’ lack of meaningful entrepreneurial opportunity, and the fact that dancing is obviously “integral” to Cheetahs’ business are better indicia of the relevant “economic realities.”

1742-44. I agree that the principle of constitutional avoidance is an important aid when a legislative enactment is “susceptible of multiple interpretations,” *Degraw v. Eighth Judicial Dist. Court*, 134 Nev. 330, 333, 419 P.3d 136, 139 (2018), but I do not find these provisions reasonably susceptible of multiple interpretations. In my view, the Legislature unambiguously decided that workers who satisfy the criteria of NRS 608.0155 should not be entitled to the protections of the MWA. I am concerned that in its effort to avoid creating constitutional problems, the majority distorts the plain meaning of the Legislature’s words.

Nevertheless, I agree with the majority that “the Legislature cannot by later-enacted statute abridge a right that the constitution guarantees.” Majority opinion *ante* at 24; *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. 484, 489, 327 P.3d 518, 522 (2014) (explaining that “the Constitution [is] superior paramount law, unchangeable by ordinary means”) (internal quotation marks omitted). Therefore, although I conclude the Legislature intended to limit the scope of the MWA, I would hold that it lacked the power to do so. Because I would reach the same result, albeit by a slightly different path, I concur.

Stiglich, J.
Stiglich

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Attorneys for Defendant,

SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

v.

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

Defendants.

Case No.: A-17-753606-C

Dept. No.: XVI

**DEFENDANT, SUNRISE HOA VILLAS IX
HOMEOWNERS ASSOCIATION'S REPLY
TO PLAINTIFF'S THIRD AND FOURTH
SUPPLEMENTS TO HIS OPPOSITION TO
MOTION TO SET ASIDE AND/OR AMEND
JUDGMENT**

Hearing: March 3, 2021 at 1:30 PM

**DEFENDANT, SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION’S REPLY TO
PLAINTIFF’S THIRD AND FOURTH SUPPLEMENTS TO HIS OPPOSITION TO MOTION
TO SET ASIDE AND/OR AMEND JUDGMENT**

Defendant, SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION (“SUNRISE”), by and through its counsel of record, the law firm of Springel & Fink LLP and the law firm of Lincoln Gustafson & Cercos, hereby files its Reply To Plaintiff’s Third and Fourth Supplement to his Opposition¹ To Motion To Set Aside And/or Amend Judgment.

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

DATED this 2nd day of March, 2021.

SPRINGEL & FINK LLP

/s/ Leonard T. Fink, Esq.

By: _____

LEONARD T. FINK, ESQ.

Nevada Bar No. 6296

RAVEN M. YIM, ESQ.

Nevada Bar No. 14972

9075 W. Diablo Drive, Suite 302

Las Vegas, NV 89148

Attorneys for Defendant,

*SUNRISE HOA VILLAS IX HOMEOWNERS
ASSOCIATION*

¹ As it did with Plaintiff’s February 10 2021 Supplemental Opposition and February 22, 2021 Second Supplemental Opposition, Sunrise objects and asks the court to not consider them because Plaintiffs filed them in violation of EDCR 2.20 which contemplates only a Motion, possible Joinder, Opposition and Reply.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Because of their apparent absence, it bears repeating the question, “where are Duslak and Sesman?” They have retained counsel and have sued the Sunrise and QBE in the Federal action, but are conspicuously absent here. If they truly are interested in protecting themselves as opposed to advancing the fiction that Plaintiff either set up or is benefitting from, they would have appeared in this State Court action and either joined this Motion to Set Aside the Default Judgment against them or Sunrise’s Opposition to Plaintiff’s Motion to Enforce. The Court should, as Sunrise is sure that it has, wondered why they have not. That simple fact supports Sunrise’s entire position.

II. POINTS AND AUTHORITIES

With no legal basis for doing so, Plaintiff continues to file supplement after supplement to his Opposition to Sunrise’s Motion. While there is no doubt that the Court should strike these supplements considering that Plaintiff never asked for leave to file them, Sunrise will address his arguments.

A. Third Supplement to Plaintiff’s Opposition

Here, Plaintiff is arguing that Sunrise, for the first time, asserts that Duslak and Sesman might be PW James employees, and even attaches an email exchange from April 2020 to illustrate that point. First, Sunrise was never aware that AdvanstaffHR paid Duslak and Sesman until its counsel secured the documentation in the Federal lawsuit. Again, as detailed in its first Reply, Plaintiff never alleged that either Duslak or Sesman were either Sunrise’s or PW James’ employees in either his Amended Complaint, disclosure statements or any motion. It was not until the parties were negotiating the settlement agreement that it became an issue at all. There was, therefore, no reason for Sunrise to make anything more than an inquiry to confirm.

Further, while Plaintiff conveniently omits the fact that his counsel approved both the Settlement Agreement and Stipulation that Duslak and Sesman were independent contractors for “all purposes” related to this litigation on November 12, 2019, or 5 months before the email exchange. Further, while Plaintiff’s signature to the agreement is undated, counsel sent an email with his client’s signature on November 13, 2019 (See **Exhibit “A”**). Thus, counsel’s April 2020 exchange has nothing to do with this Motion. it only concerned Plaintiff’s counsel’s request to amend the actual Dismissal of the First Amended Complaint.

B. Plaintiff’s Fourth Supplement to His Opposition

Plaintiff’s reliance on the recent Supreme Court decision *Doe v. La Fuente*, 137 Nev. Adv. Opn. 3 (2021) is completely misplaced because the decision has absolutely nothing to do with anything related to this case, much less the Motions before the Court. While it is interesting to note that Duslak and Sesman’s counsel, Richard Kimball, also represented the Appellants, thus making this his only appearance in this case, there is nothing else remarkable or even applicable.

As this Court can see, Plaintiff’s position that this decision can somehow invalidate his stipulation that Duslak and Sesman were only independent contractors for purposes of this litigation is patently absurd, even under the most liberal reading of this decision. The Nevada Supreme Court simply decided that workers who had agreed by contract that they were independent contractors, were actually employees when they applied the federal economic realities test to Article 15, Section 16 of the Nevada Constitution, the Minimum Wage Amendment. *Id.* at 2. Thus, the Court need not look any further. Even if it did, there has never been any discovery, discussion or even a pleading by anyone discussing the applicability of the federal test to this case, especially in Plaintiff’s Fourth Supplement, which is where we might actually expect that to be.

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III. CONCLUSION

There is nothing in either Supplement that prevents this Court from either enforcing the written agreement between the parties or rescinding it in its entirety. Again, if the Court enforces the settlement agreement, then it should either set aside the Default Judgment or modify it to comport to the agreement.

DATED this 2nd day of March, 2021.

SPRINGEL & FINK LLP

By: /s/ Leonard T. Fink, Esq.
LEONARD T. FINK, ESQ.
Nevada Bar No. 6296
RAVEN M. YIM, ESQ.
Nevada Bar No. 14972
9075 W. Diablo Drive, Suite 302
Las Vegas, NV 89148
Attorneys for Defendant,
*SUNRISE HOA VILLAS IX HOMEOWNERS
ASSOCIATION*

CERTIFICATE OF SERVICE
Simone Russo v. Cox Communications Las Vegas, Inc., et al.
District Court Case No. A-17-753606-C

STATE OF NEVADA)
) ss.
 COUNTY OF CLARK)

I, Alma Duarte, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 9075 W. Diablo Drive, Suite 275, Las Vegas, Nevada, 89148.

On **March 2, 2021**, I served the document described as **DEFENDANT, SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO SET ASIDE AND/OR AMEND JUDGMENT** on the following parties:

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

- _____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business.
- _____ VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.
- X VIA ELECTRONIC SERVICE: by submitting the foregoing to the Court's E-filing System for Electronic Service upon the Court's Service List pursuant to EDCR 8. The copy of the document electronically served bears a notation of the date and time of service. The original document will be maintained with the document(s) served and be made available, upon reasonable notice, for inspection by counsel or the Court.

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

/s/ Alma Duarte

 An employee of Springel & Fink LLP

EXHIBIT A

From: [Leonard Fink](#)
To: [Leonard Fink](#)
Subject: FW: Russo
Date: Monday, March 1, 2021 10:22:39 PM

Leonard Fink
 Partner



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

From: Leonard Fink <lfink@springelfink.com>
Sent: Wednesday, November 13, 2019 1:25 PM
To: David Sampson <davidsampsonlaw@gmail.com>; Christopher A. Turtzo
 <turtzo@morrisullivanlaw.com>; Will Lemkul <Lemkul@morrisullivanlaw.com>; David Clark
 <dclark@lipsonneilson.com>; Joseph Meloro <jmeloro@sgroandroger.com>
Cc: Alma Duarte <aduarte@springelfink.com>; Thomas G. Levine <tlevine@springelfink.com>
Subject: Re: Russo

Alma, please work with Mr. Sampson to get him the check from Armour.

From: David Sampson <davidsampsonlaw@gmail.com>
Date: Wednesday, November 13, 2019 at 4:23 PM
To: Leonard Fink <lfink@springelfink.com>, "Christopher com"<turtzo@morrisullivanlaw.com>, 'William Lemkul' <Lemkul@morrisullivanlaw.com>, David
 Clark <dclark@lipsonneilson.com>, Joseph Meloro <jmeloro@sgroandroger.com>
Subject: Russo

Dr. Russo has signed the release. Please let me know when I can exchange it for the settlement checks.

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

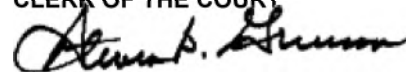
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DAVID F. SAMPSON, ESQ.

Nevada Bar No. 6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3rd Street

Las Vegas, NV 89101

Tel: 702-605-1099

Fax: 888-209-4199

Email: david@davidsampsonlaw.com

Attorney for Plaintiff

SIMONE RUSSO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

vs.

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

Defendants.

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

MOTION FOR SUBSTITUTION OF PARTY

Plaintiff, SIMONE RUSSO, hereby moves to substitute David Clark, Esq., and/or Julie Funai, Esq., in the place and stead of Defendant, CHRIS SCARCELLI, as the proper party in this action. This motion is made and based upon the pleadings and papers on file herein, the

attached memorandum of points and authorities, and any oral argument the Court may entertain in this matter.

DATED this 4th day of March, 2021

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ David Sampson

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

MEMORANDUM OF POINTS AND AUTHORITIES

Dr. Russo brought this action against Defendants COX COMMUNICATIONS, IES RESIDENTIAL, SUNRISE VILLAS IX HOA, PW JAMES MANAGEMENT, CHRIS SCARCELLI, KEVIN BUSHBAKER, RICHARD DUSLAK, and JUSTIN SESMAN. All of the said Defendants filed answers in this action, with the exception of Defendants DUSLAK and SESMAN. As a result, Dr. Russo took defaults against DUSLAK and SESMAN.

In October 2019 the active parties to this suit reached a global settlement that the parties agreed would not have any affect on Dr. Russo's rights against the defaulted parties, DUSLAK and/or SESMAN, and which specifically envisioned Dr. Russo producing a default judgment against DUSLAK and SESMAN. On December 19, 2019 the Court entered default judgment against DUSLAK and SESMAN. Dr. Russo sent Notice of entry of the default judgment to all parties in this matter. The Court issued an Order to Statistically Close Case on May 14, 2020.

In November 2020, 6 months after this case had been closed and 11 months after default judgment had been entered in this matter, QBE insurance, the insurance carrier for

SUNRISE VILLAS IX HOA, sued Dr. Russo, DUSLAK, and SESMAN in a declaratory relief action in federal court. Dr. Russo filed an Answer to the lawsuit.¹ DUSLAK and SESMAN filed answers and counterclaims in which DUSLAK and SESMAN claimed they were employees of SUNRISE.

Even though Dr. Russo is not claiming that DUSLAK or SESMAN are SUNRISE employees, and even though Dr. Russo merely answered the lawsuit QBE filed against him, SUNRISE filed a motion to set aside the judgment in this matter, and has also asked this Court to set aside the settlement entered in this matter. By filing the said motion, SUNRISE reopened this case. On February 4, 2021 Defendant SCARCELLI filed a suggestion of death on the record indicated he passed away on March 22, 2020.

Dr. Russo does not understand why SUNRISE believes he should lose his rights under the settlement agreement, and why SUNRISE believes Dr. Russo should lose his rights under the duly entered default judgment simply because QBE sued him as well as DUSLAK and SESMAN, and DUSLAK and SESMAN now claim to be SUNRISE employees. Nevertheless, as SUNRISE's motion is currently under advisement with the Court, and as the possibility exists that QBE's lawsuit, and DUSLAK and SESMAN's answers to the same, may result in Dr. Russo losing his rights even though Dr. Russo is not claiming DUSLAK and SESMAN are SUNRISE employees, Dr. Russo is compelled to file this motion to substitute as required under STATUE given the suggestion of death on file.

Under NRCP 25, if a party dies and the claim is not thereby extinguished, any party may file a motion for substitution of any deceased party. If a motion for substitution is not made

¹ Dr. Russo initially filed a counterclaim as well, but amended the same 8 days after filing it, and withdrew the same 12 days after that.

within the first ninety (90) days of receiving the Suggestion of Death upon the Record, the action shall be dismissed as to the deceased party.

Should the Court determine that Dr. Russo's rights arising from the default judgment and the settlement entered in this matter should be set aside as a result of assertions DUSLAK and SESMAN have made in the federal declaratory relief action, Dr. Russo will have the right to pursue his claims against Defendant SCARCELLI. The instant motion is made pursuant to NRCP 25 to preserve the Plaintiffs claim and ensure they are not dismissed as to Defendant SCARCELLI.

It must be noted that Defendants' Suggestion of Death Upon the Record in this matter appears to be invalid. The Supreme Court of Nevada held in *Barto v. Weishaar*, 101 Nev. 27, 692 P.2d 498 (1985) that any suggestion of death must be made by, or identify, the successor representative of the deceased. The Court also held that where the suggestion of death was neither filed by, nor identified, a successor or representative of the deceased the 90-day limitation under NRCP 25(a)(1) is not triggered. *Id.*

The Suggestion of Death in this matter was filed by David Clark, Esq. and Julie Funai, Esq., and does not identify a successor representative of the deceased. As a Suggestion of Death must be made by or identify the successor, and as the instant Suggestion of Death does not identify a successor, one can only deduce that the Suggestion of Death was made by the successor(s).

The Supreme Court has held that generally, a personal representative of the deceased must be substituted as a party. *See, Koester v. Administrator of Estate of Koester*, 101 Nev. 68, 693 P.2d 569 (1985). As such it appears the Suggestion of Death is improper. Plaintiffs also ask that Defendant be ordered to file a proper suggestion of death which named SCARCELLI's

successor and/or personal representative so that a motion to substitute the named successor and/or representative can be filed.

Should the Court determine that the second Suggestion of Death was in fact filed by the successor and/or representative of SCARCELLI, and that David Clark, Esq. and Julie Funai, Esq., are in fact the successor(s) and/or representative(s) of SCARCELLI, then Dr. Russo moves that David Clark, Esq. and Julie Funai, Esq., be substituted in this action as the successor and/or representative of Defendant SCARCELLI.

CONCLUSION

For the foregoing reasons Plaintiffs' Motion for Substitution of Party should be GRANTED and the Court should either: strike the second Suggestion of Death Upon the Record filed in this matter and Order Defendant to file a proper Suggestion of Death which names a successor and/or representative for the deceased as required under *Barto*; or substitute the filing party, David Clark, Esq., and Julie Funai, Esq., as the successor and/or representative of Defendant SCARCELLI so this matter may proceed as envisioned in NRCP 25(a)(1).

DATED this 4th day of March, 2021

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ David Sampson

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Fax No: 888-209-4199

Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, LLC., and that on this 4th day of MARCH, 2021, I served a copy of the foregoing **MOTION TO SUBSTITUTE** on all the remaining parties in this matter via the court's electronic online filing system and as follows:

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

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

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

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

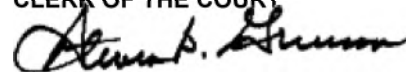
WILL LEMKUL, ESQ.
CHRISTOPHER A. TURTZO, ESQ.
3770 Howard Hughes, Pkwy Suite 170
Las Vegas NV 89169
Attorney for Defendant
IES RESIDENTIAL INC. and
COX COMMUNICATIONS

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

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

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

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3/5/2021 10:11 AM
Steven D. Grierson
CLERK OF THE COURT


BRIEF

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,)

Plaintiff,)

vs.)

CASE NO: A-17-753606-C

DEPT. NO: XVI

COX COMMUNICATIONS LAS VEGAS,)

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

IES RESIDENTIAL, INC., SUNRISE)

VILLAS IX HOMEOWNERS)

ASSOCIATION, J & G LAWN)

MAINTENANCE, KEVIN BUSHBAKER,)

PWJAMES MANAGEMENT &)

CONSULTING, LLC., J. CHRIS)

SCARCELLI, DOE LANDSCAPER,)

RICHARD DUSLAK, JUSTIN SESMAN,)

AND DOES I-V, and ROE)

CORPORATIONS I-V, inclusive,)

Defendants.)

POST HEARING BRIEF ON
OPPOSITION TO MOTION TO SET
ASIDE AND/OR AMEND JUDGMENT

**POST HEARING BRIEF ON OPPOSITION TO MOTION TO SET ASIDE AND/OR
AMEND JUDGMENT**

Plaintiff, SIMONE RUSSO, files this post-hearing Brief in support of his opposition to SUNRISE's motion to set aside and/or amend the duly entered Judgment in this matter.

Given the gravity of this matter, particularly the fact that if the Court grant's SUNRISE's request to set the settlement aside SIMONE, a 78-year-old retiree with very limited means, may

be required to pay over \$350,000.00 to the Defendants in this matter, which SIMONE has no way to pay, it is vital that SIMONE take every opportunity to have his position heard by the Court before the Court rules on this matter.

During the hearing on this matter the Court asked counsel for SIMONE how the settlement would be affected if the Court denied SUNRISE's motions. As counsel for SIMONE attempted to answer the Court's question "on the fly", and cannot specifically recall whether he was able to articulate all of his thoughts on the matter, counsel for SIMONE would like to make sure he provides a clear response to the Court's question. ***The settlement between SIMONE and SUNRISE will not be affected in any manner if the Court denies SUNRISE's motions.*** The settlement stands as agreed, which is all SIMONE has ever asked.

As noted below, should the Court deny SUNRISE's motion, 1) SUNRISE will still be released, excluding DUSLAK and SESMAN, 2) SIMONE will still retain all rights against DUSLAK and SESMAN, and 3) SUNRISE and RUSSO will still agree the Judgment was entered based on SUNRISE's representations and SIMONE's agreement that DUSLAK and SESMAN were independent contractors, all as set forth in the agreement.

1) SUNRISE will still be released, excluding DUSLAK and SESMAN, which is exactly what the written agreement states.

The settlement agreement (as copied directly from the agreement) reads as follows:

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;

What is set forth in the agreement will still be the case if SUNRISE's motions are denied.

SUNRISE remains released, with the specific exclusion of DUSLAK and SESMAN.

2) SIMONE will still retain all rights against DUSLAK and SESMAN, which is exactly what the written agreement states.

The settlement agreement (as copied directly from the agreement with highlights added for clarity's sake) also reads as follows:

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

Again, what is set forth in the agreement will still be the case if SUNRISE's motions are denied.

///

///

///

- 3) **SUNRISE and SIMONE still agree that the Judgment was entered against DUSLAK and SESMAN as individuals given SUNRISE's representations, and SIMONE's agreement thereto, that DUSLAK and SESMAN were independent contractors, which is exactly what the agreement states.**

The settlement agreement (as copied directly from the agreement) reads as follows:

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.

Again, what is set forth in the agreement will still be the case if SUNRISE's motions are denied. *SUNRISE did not file the motions to amend or set aside the judgment because of anything SIMONE did.* SUNRISE filed the motions because QBE sued DUSLAK and SESMAN, and in responding to QBE's suit DUSLAK and SESMAN claim they were employees. *SIMONE must not be punished for the actions of DUSLAK and/or SESMAN.*¹

The Court should therefore deny SUNRISE's motions and leave this matter as resolved between the SUNRISE and SIMONE, with SUNRISE being released excluding DUSLAK and SESMAN as agreed, with SIMONE retaining all rights to pursue his Judgment against DUSLAK and SESMAN as agreed, and with SUNRISE and RUSSO continuing to agree that the Judgment was entered against DUSLAK and SESMAN as individuals as a result of

¹ During the hearing counsel for SUNRISE made repeated representations to the Court that DUSLAK and SESMAN were suing SUNRISE for \$180,000,000.00. There is absolutely no reason the actions of DUSLAK and/or SESMAN should play any role in the Court's decision to amend SIMONE's Judgment against DUSLAK and/or SESMAN, nor should the actions of DUSLAK and/or SESMAN play any role in determining whether the agreement between SUNRISE and SIMONE should be set aside.

SUNRISE's representations to the Court, and SIMONE's agreement based on the same, that DUSLAK and SESMAN were independent contractors. Any other ruling would alter the settlement agreement and would greatly impact the rights of the litigants as specifically agreed therein, particularly SIMONE's right to retain all rights against DUSLAK and SESMAN in the default Judgment SIMONE ultimately procured. There is no cause to disrupt the status quo between SIMONE and SUNRISE, nor the duly entered Judgment from over a year ago.

CONCLUSION

For the foregoing reasons SUNRISE's motions should be denied.

DATED this 5th day of March, 2021.

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ *David Sampson*

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Fax No: 888-209-4199

Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

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

LEONARD FINK, ESQ.
9075 W. Diablo Dr. Suite 302
Las Vegas NV 89148
Counsel for SUNRISE

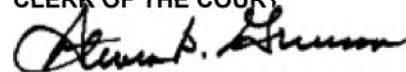
And

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

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

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

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Steven D. Grierson
CLERK OF THE COURT


BREF

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Nevada Bar No. 6296

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Attorneys for Defendant,

SUNRISE HOA VILLAS IX HOMEOWNERS ASSOCIATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

v.

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

Defendants.

Case No.: A-17-753606-C

Dept. No.: XVI

**RESPONSE TO PLAINTIFF'S POST
HEARING BRIEF RE: DEFENDANT'S
MOTION TO SET ASIDE THE
JUDGMENT**

Hearing: March 3, 2021 at 1:30 PM

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**RESPONSE TO PLAINTIFF'S POST HEARING BRIEF RE: DEFENDANT'S
MOTION TO SET ASIDE THE JUDGMENT**

Defendant Sunrise Villas IX Homeowners Association ("Sunrise ") responds to the Post Hearing Brief filed by Plaintiff as follows:

DISCUSSION

First, the Court should strike Plaintiff's brief because it is procedurally improper (similar to the myriad of Supplemental Oppositions his counsel filed to Defendant's Motion) and the Court never asked for supplemental briefing. Plaintiff's brief is merely an attempt to evoke some type of sympathy which should not be the basis for how the Court rules on any of the pending motions.

Second, through this brief, Plaintiff's counsel wants this Court to ignore the fact that created this situation, not Sunrise. While counsel continually argued during the hearing that Sunrise induced him to enter into this agreement, he very conveniently forgot that he was the one that suggested that the parties stipulate that Duslak and Sesman were independent contractors for all purposes for this litigation when confronted with the real possibility that Sunrise was not going to agree to any settlement, as the court record from the November 7, 2019 hearing very clearly shows.

Given this, Plaintiff should direct any frustration to his counsel (who is presumably acting with Plaintiff's consent) and no one else.

In connection with the settlement reached in this case, Plaintiff (through his counsel) agreed as follows:

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

This stipulation, that Plaintiff's counsel brazenly asserts is "void" because it arguably conflicts with other provisions in the Settlement Agreement, was key and central to the decision of Sunrise

(and its insurer QBE) to settle. It was an addendum to the Settlement Agreement and very clearly operates to release both Duslak and Sesman for any and all liability EXCEPT where they acted as independent contractors. Without this stipulation, there would not have been any settlement at all.

In agreeing to settle, Sunrise (and its insurer) intended to bar future liability and exposure for the alleged incident at issue in this case. Because Sunrise is necessarily liable for the conduct of its employees (but not independent contractors), it is axiomatic that a release of Duslak and Sesman as alleged former HOA employees was key and central in the decision to settle.¹ The stipulation above, therefore, was central and core to the settlement as now highlighted by the fact that Sunrise has now been sued for approximately \$180,000,000 based on a \$25,000,000+ default judgment which it never opposed based on this stipulation.

This Court has the following two (2) options:

Option 1: Enforce the settlement by binding Plaintiff to counsel's representation.

Option 2: Invalidate the settlement based on no meeting of the minds between the parties

Under either option, the default judgment must be set aside.²

Under Option 1, the default judgment violates the terms of the settlement given Plaintiff's agreement to only proceed against Duslak and Sesman as independent contractors and not employees.

Under Option 2, the default and corresponding judgment are a product of the lack of any meeting of the minds because Sunrise permitted for the default based on a misunderstanding regarding the settlement and the impact of it.

In either scenario, this situation is a product of efforts by Plaintiff's counsel to distance himself from the stipulation. Given this, while Sunrise shares Plaintiff's frustration with this situation, this frustration is a product of the refusal of Plaintiff's counsel to honor and comply with the stipulation he agreed to or to get around its limitations.

Accordingly, Sunrise requests that this Court either enforce the settlement and/or set it aside

¹ At the time it settled, Sunrise believed that Duslak and Sesman were independent contractors. The fact that each now contend otherwise highlights why Sunrise required that Plaintiff agree to narrow his claims against each as part of any settlement.

² The judgment should likewise be set aside given that no record exists to support it such that the Supreme Court should set it aside based on due process considerations.

along with the default judgment. Sunrise also asks this Court to enter an order prohibiting any further briefing unless specifically requested.

DATED this 9th day of March, 2021.

SPRINGEL & FINK LLP

/s/ Leonard T. Fink, Esq.

By: _____

LEONARD T. FINK, ESQ.
Nevada Bar No. 6296
RAVEN M. YIM, ESQ.
Nevada Bar No. 14972
9075 W. Diablo Drive, Suite 302
Las Vegas, NV 89148
Attorneys for Defendant,
*SUNRISE HOA VILLAS IX HOMEOWNERS
ASSOCIATION*

LINCOLN, GUSTAFSON & CERCOS LLP

/s/ Shannon G. Splaine, Esq.

By: _____

SHANNON G. SPLAINE, ESQ.
NEVADA BAR NO: 8241
3960 Howard Hughes Pkwy., Suite 200
Las Vegas, NV 89169
Attorneys for Defendant
*SUNRISE HOA VILLAS IX HOMEOWNERS
ASSOCIATION*

CERTIFICATE OF SERVICE
Simone Russo v. Cox Communications Las Vegas, Inc., et al.
District Court Case No. A-17-753606-C

STATE OF NEVADA)
) ss.
 COUNTY OF CLARK)

I, Alma Duarte, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 9075 W. Diablo Drive, Suite 275, Las Vegas, Nevada, 89148.

On **March 9, 2021**, I served the document described as **RESPONSE TO PLAINTIFF'S POST HEARING BRIEF RE: DEFENDANT'S MOTION TO SET ASIDE THE JUDGMENT** on the following parties:

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

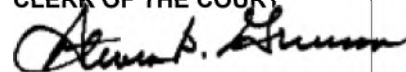
- _____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business.
- _____ VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.
- X VIA ELECTRONIC SERVICE: by submitting the foregoing to the Court's E-filing System for Electronic Service upon the Court's Service List pursuant to EDCR 8. The copy of the document electronically served bears a notation of the date and time of service. The original document will be maintained with the document(s) served and be made available, upon reasonable notice, for inspection by counsel or the Court.

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

/s/ Alma Duarte

 An employee of Springel & Fink LLP

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Steven D. Grierson
CLERK OF THE COURT



LIPSON NEILSON P.C.
DAVID A. CLARK (Bar No. 4443)
JULIE A. FUNAI, ESQ. (Bar No. 8725)
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jfunai@lipsonneilson.com
Attorneys for Defendant J. Chris Scarcelli

DISTRICT COURT

CLARK COUNTY, NEVADA

SIMONE RUSSO,

Plaintiff,

vs.

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

Defendants.

KEVIN BUSHBAKER,

Cross-Claimant.

vs.

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

Cross-Defendants.

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

**OPPOSITION TO PLAINTIFF'S
MOTION TO SUBSTITUTE
UNDERSIGNED COUNSEL AS
REPRESENTATIVE FOR DEFENDANT,
J. CHRIS SCARCELLI.**

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

Undersigned counsel for Defendant, J. Chris Scarcelli, hereby opposes Plaintiff's Motion to substitute either David A. Clark or Julie A. Funai, attorneys with the firm of Lipson Neilson, P.C., as representative for the deceased, J. Chris Scarcelli in this action. This Opposition is made and based on Counsel's Declaration, the Memorandum of Points and Authorities, the pleadings and file, and any evidence or argument the Court may entertain.

MEMORANDUM OF POINTS AND ATHORITIES

As stated in Plaintiff's Motion, Defendant, J. Chris Scarcelli (Mr. Scarcelli) entered into a settlement of this case in October 2019, which was placed on the record at the time. In March 2020, Mr. Scarcelli suffered a massive stroke, was hospitalized for several weeks, and finally died on March 25, 2020. *See, Declaration of Counsel* and Death Certificate previously filed in this matter.

At the time of his hospitalization and death, Mr. Scarcelli was divorced, had few if any assets, and almost \$1 million in medical bills. In addition, Mr. Scarcelli owed the undersigned substantial legal fees for representation in this case.

Citing *Barto v. Weishaar*, 101 Nev. 27, 692 P.2d 498 (1985), Plaintiff's Motion asserts that, "Defendants' [sic] Suggestion of Death Upon the Record in this matter appears to be invalid." Plaintiff's *Motion*, 4:11-12. Plaintiff asserts that, "any suggestion of death must be made buy, or identify, the successor representative of the deceased." *Id.* at 13-14.

Plaintiff then makes the gratuitous leap that, "as the instant Suggestion of Death does not identify a successor, one can only deduce that the Suggestion of Death was made by the successor(s)." *Id.* at 20-23.

OK, first, Plaintiff's reliance on *Barto* is misplaced, since it has been overruled on this point. In 2019, the Supreme Court held,

In this original proceeding, we reconsider *Barto v. Weishaar*, 101 Nev. 27, 692 P.2d 498 (1985), and its conclusion that a suggestion of death emanating [**2] from the deceased party must identify the deceased party's successor or representative in order to trigger the deadline in NRCP 25(a)(1) to file a motion to substitute. Although we acknowledge the importance of precedent, we are convinced that *Barto* expanded NRCP 25(a)(1) beyond its plain language. Therefore, we overrule *Barto* and hold that a suggestion of death that is properly served triggers the deadline for filing a motion to substitute regardless of which

1 party files it and whether it identifies the deceased party's successor or
2 representative.

3 *McNamee v. Eighth Judicial Dist. Court*, 450 P.3d 906, 907 (Nev. 2019). Thus, undersigned
4 counsel has not inadvertently transformed himself into Mr. Scarcelli's successor by notifying the
5 Court and parties of his client's death almost a year ago.

6 Second, Mr. Scarcelli left a sizeable balance of unpaid legal fees. Undersigned counsel has
7 an inherent conflict of interest in performing any fiduciary acts for the benefit of Mr. Scarcelli.
8 *See, e.g.* RPC 1.7(a)(2) ("significant risk that the representation of one or more clients will be
9 materially limited by the lawyer's . . . by a personal interest of the lawyer."). Further, requiring
10 undersigned counsel to appear as Mr. Scarcelli's representative in the complete absence of an
11 estate would be an unfair and unreasonable financial burden.

12 Third, the pending motions do not concern Mr. Scarcelli's role in the case or the
13 settlement. Rather, they concern the defaulted parties and their claims to have been employees of
14 Sunrise Villas HOA. None of these parties had or are asserting claims against Mr. Scarcelli.
15 Therefore, no good reason exists to reanimate this Defendant's participation in this litigation.

16 For the foregoing reasons, undersigned counsel requests that this Court deny Plaintiff's
17 Motion to Substitute the undersigned as a representative for Mr. Scarcelli.

18 DATED this 11th day of March 2021.

19 LIPSON NEILSON P.C.

20 By: /s/ David A. Clark

21 DAVID A. CLARK (Bar No. 4443)
22 JULIE A. FUNAI, ESQ. (Bar No. 8725)
23 9900 Covington Cross Dr., Suite 120
24 Las Vegas, NV 89144
25 *Attorneys for Defendant J. Chris Scarcelli*
26
27
28

DECLARATION OF DAVID A. CLARK

David A. Clark, declares as follows:

1. I am an attorney licensed to practice in the State of Nevada. I was counsel of record in the above captioned matter for Defendant, J. Chris Scarcelli.

2. I make this declaration upon personal knowledge, and if called as a witness, I could and would competently testify to the facts contained in this declaration. I make this Declaration in support of my Opposition to Plaintiffs' Motion for Substitution of Party, naming me as the representative for Mr. Scarcelli in any litigation going forward.

3. Mr. Scarcelli retained me on an hourly, private-pay basis to defend him in this lawsuit, when he was added as a Defendant in or about March 2018. As trial approached, Mr. Scarcelli fell behind on his bill. After the case settled during the second round of jury selection, Mr. Scarcelli informed me he was making arrangements to secure monies to settle up his bill.

4. Unfortunately, as I was informed by his ex-wife, Marianne Scarcelli, prior to making any payments, Mr. Scarcelli suffered a stroke and was hospitalized for several weeks, before succumbing to his injuries following surgery. I am informed and believe that at the time of his death, Mr. Scarcelli had little assets and had incurred almost \$1 million in medical bills. She and her counsel indicated that there were no assets to satisfy any creditors.

5. Having already lost many thousands of dollars in unpaid fees, I must acknowledge that I am resistant to perform further unpaid services for this client. Furthermore, it would work an unreasonable and unfair financial hardship to require me to act as the Representative in this litigation should the Court re-open it.

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

DATED this 11th day of March 2021, in Las Vegas, Nevada.

/s/ David A. Clark

DAVID A. CLARK

CERTIFICATE OF SERVICE

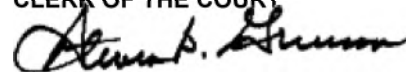
Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 11th day of March, 2021, I electronically transmitted the foregoing **OPPOSITION BY COUNSEL FOR DEFENDANT, J, CHRIS SCARCELLI, TO PLAINTIFF'S MOTION TO SUBSTITUTE COUNSEL AS PARTY REPRESENTATIVE PURSUANT TO NRCP 25(A)** to the Clerk's Office using the Odyssey E-File & Serve System for transmittal to the following Odyssey E-File & Serve registrants:

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

/s/ Debra Marquez

 An Employee of LIPSON NEILSON P.C.

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3/11/2021 9:42 AM
Steven D. Grierson
CLERK OF THE COURT


RPLY

DAVID F. SAMPSON, ESQ.
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Fax: 888-209-4199
Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

POST HEARING BRIEF ON
OPPOSITION TO MOTION TO SET
ASIDE AND/OR AMEND JUDGMENT

**REPLY TO RESPONSE TO POST HEARING BRIEF ON OPPOSITION TO MOTION
TO SET ASIDE AND/OR AMEND JUDGMENT**

Plaintiff, SIMONE RUSSO, files this reply to SUNRISE's response to SIMONE's post-hearing Brief in support of his opposition to SUNRISE's motion to set aside and/or amend the duly entered Judgment in this matter.

Contrary to SUNRISE's assertions in its response, SIMONE is not seeking to "distancing himself from the stipulation". SIMONE has only asked, and is still asking, that the stipulation and the agreement be enforced as specified in its express terms. SIMONE asks that the Court recognize that under the agreement SIMONE 1) released SUNRISE **"EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN"** as specifically stated in all capitol and bolded letters on page 1 of the agreement; 2) released Defendants' "employees **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN**" as specifically stated in all capitol and bolded letters in the agreement on the top of page 4 of the agreement' 3) retained all rights to pursue any claims against DUSLAK and SESMAN as specifically stated on the bottom of page 4; and agreed to take Judgment against DUSLAK and SESMAN as individuals and not as SUNRISE employees as SIMONE agreed, and still agrees, that for purposes of this lawsuit DUSLAK and SESMAN were independent contractors based on what SUNRISE represented to SIMONE and the Court.

SIMONE has not strayed from the agreement or the stipulation. SIMONE still agrees that for purposes of this action DUSLAK and SESMAN were independent contractors, and that SIMONE was therefore justified in procuring Judgment against DUSLAK and SESMAN as individuals. Such actions were specifically envisioned in the agreement and stipulation, and were appropriate for SIMONE to take, which is why SUNRISE did not object to SIMONE doing so in late 2019, and is why SUNRISE did not seek to amend the Judgment nor set it aside at any time in 2020.

It was SUNRISE that filed this motion seeking to modify the agreement and asking the Court to hold that the agreement somehow impacted SIMONE's rights against DUSLAK and SESMAN. When SUNRISE took that position, SIMONE directed the Court to the bottom of

page 4 of the agreement which states that any language that would be read to impact SIMONE's rights against DUSLAK and/or SESMAN (given SUNRISE's new position on the matter) is deemed null and void.

SIMONE continues to ask that the Court enforce the agreement and the stipulation and find that under the agreement SIMONE released SUNRISE excluding DUSLAK and SESMAN, retained all rights against DUSLAK and SESMAN, and properly procured Judgment against DUSLAK and SESMAN as individuals given SUNRISE's representations and SIMONE's agreement that DUSLAK and SESMAN were independent contractors. The agreement stands as written and the Judgment was properly entered and should not be disturbed.

SUNRISE insistence that the duly entered Default Judgment be set aside as allegedly violative of the agreement is a non-sequitur. The agreement was that Judgment would be entered against DUSLAK and SESMAN individually as SIMONE and RUSSO agreed DUSLAK and SESMAN were independent contractors, *and that is exactly what the Judgment does*. The Judgment is not against SUNRISE. The Judgment does not include SUNRISE nor does it state that DUSLAK or SESMAN are in any way affiliated with SUNRISE. There is absolutely no cause to set the Judgment against DUSLAK and SESMAN as individuals aside.

SUNRISE'S RESPONSE ADMITS ITS POSITION IS NOT PROPER

Most importantly, SUNRISE admits in its latest response that it is seeking relief from the duly entered Judgment *based on its own mistake*. On page 3 line 17 of SUNRISE's response SUNRISE asks this Court to set the Judgment aside and invalidate the settlement agreement because "the default and corresponding judgment are a product of the lack of any meeting of the minds because *SUNRISE permitted the default based on a misunderstanding regarding the settlement and the impact of it.*" (emphasis added). As SUNRISE is seeking relief from the

Judgment based on its own mistake (an alleged misunderstanding regarding the settlement), such relief can only be permitted under NRCP 60(b)(1) (“mistake, inadvertence, surprise, or excusable neglect”), which under NRCP 60(c)(1) “must be made . . . no more than 6 months after . . . service of written notice of entry of the judgment”. SUNRISE, by its own admission, is seeking relief for its mistake long after the statutorily prescribed time to do so has expired. Such cannot be permitted.

SUNRISE’s request to set the settlement agreement aside for “the lack of any meeting of the minds because SUNRISE permitted the default based on a misunderstanding regarding the settlement and the impact of it” also flies in the face of the Nevada Supreme Court’s holding in *Anderson v. Sanchez*, 132 Nev.Adv.Op. 34 (2016) wherein the Court held that ***the doctrine of mistake is not grounds for rescission of a contract when the party bears the risk of mistake***. The Court further held that a party bears the risk of mistake if the party is aware at the time of the formation of the contract that they only have limited knowledge of the facts to which the mistake relates, but treats that knowledge as sufficient, the court will allocate the risk of mistake to that party. *Id.* The Court made similar findings in *In re Irrevocable Trust Agreement of 1979*, 130 Nev. Adv. Op. 63 (Nev. 2014) and *Gramanz v. Gramanz*, 113 Nev. 1, 930 P.2d 753 (1997) when the Court held that a party’s own misunderstanding cannot support a claim for mistake in seeking to set aside an agreement.

SUNRISE has now acknowledged its mistake but failed to recognize that ***the rules and case law in Nevada do not permit relief from a mistake over a year after judgment was entered***, and never permit an agreement to be set aside based on a party’s mistake when the party bore the risk of the mistake and treated its knowledge at the time of formation as sufficient.

SIMONE is not asking, and has not asked, SUNRISE to pay for any portion of the Judgment as the Judgment was entered against DUSLAK and SESMAN as individuals and not as SUNRISE employees. SIMONE asks only that the Court enforce the agreement as written, which did not release DUSLAK or SESMAN, and specifically permitted SIMONE to procure his Judgment against DUSLAK and SESMAN individually based on SUNRISE's representations and SIMONE's agreement based on the same that DUSLAK and SESMAN were independent contractors. SIMONE stands by the agreement and the stipulation and asks that SUNRISE not be permitted to set the Judgment and/or the agreement aside based on the actions of DUSLAK and/or SESMAN in the declaratory relief action.

CONCLUSION

For the foregoing reasons SUNRISE's motions should be denied.

DATED this 11th day of March, 2021.

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ *David Sampson*

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Fax No: 888-209-4199

Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, LLC., and that on this 11th day of March, 2021, I served a copy of the foregoing **REPLY** on all the remaining parties in this matter via the court's electronic online filing system and as follows:

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

LEONARD FINK, ESQ.
9075 W. Diablo Dr. Suite 302
Las Vegas NV 89148
Counsel for SUNRISE

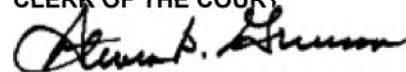
And

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

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

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

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3/15/2021 10:49 AM
Steven D. Grierson
CLERK OF THE COURT


RPLY

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Fax: 888-209-4199
Email: david@davidsampsonlaw.com
Attorney for Plaintiff
SIMONE RUSSO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

CASE NO: A-17-753606-C
DEPT. NO: XVI
HEARING DATE: April 6, 2021
HEARING TIME: 9:05 a.m.

REPLY TO OPPOSITION TO MOTION FOR SUBSTITUTION OF PARTY

Plaintiff, SIMONE RUSSO, replies to the Defendant SCARCELLI's opposition to SIMONE's motion to substitute David Clark, Esq., and/or Julie Funai, Esq., in the place and stead of Defendant, CHRIS SCARCELLI, as the proper party in this action.

///

MEMORANDUM OF POINTS AND AUTHORITIES

From the outset SIMONE notes that he wholeheartedly agrees with Defendant SCARCELLI that this matter was settled to the satisfaction of all active parties in October 2019, with the terms of the settlement being placed on the record during the October 18, 2019 hearing in this matter. The active parties to the suit confirmed the settlement included the following terms: 1) Defendant SCARCELLI and the other active parties to the litigation were being released, excluding Defendants DUSLAK and SESMAN who had not answered and had been defaulted, and 2) The settlement with the active parties would not have any effect on any of SIMONE's rights against DUSLAK and SESMAN, including SIMONE's rights to procure a default judgment against DUSLAK and SESMAN. SIMONE, as with all other parties to the settlement with the notable exception of SUNRISE VILLAX IX HOA, would like the settlement to stand as placed on the record on October 18, 2019 and this matter remain closed.

In subsequent discussions that took place after the settlement terms were placed on the record on October 18, 2019 SUNRISE asked that the settlement impact SIMONE's rights against DUSLAK and SESMAN by releasing DUSLAK and SESMAN as SUNRISE employees. SIMONE adamantly refused any such release of DUSLAK and/or SESMAN. Counsel for SIMONE did suggest the parties could stipulate that for purposes of this suit DUSLAK and SESMAN were not employees, thus enabling SIMONE to procure a judgment against DUSLAK and SESMAN as individuals. Counsel for SIMONE was adamant that even if the parties stipulated that DUSLAK and SESMAN were not employees, SIMONE still retained all rights against DUSLAK and SESMAN, and that the settlement would have no impact on those rights.

After the active parties settled this matter to their satisfaction, SIMONE procured Judgment DUSLAK and SESMAN as envisioned. The settled parties were given notice of the application for default and the default hearing and did not oppose SIMONE's procurement of the Judgment against DUSLAK and SESMAN. After Judgment was entered against DUSLAK and SESMAN SIMONE sent a Notice of Entry of Judgment to all parties in this matter on December 17, 2019, including the settled parties. No parties took any steps to alter, amend, or otherwise seek relief from the duly entered Judgment anytime in 2019 or 2020.

In January 2021 DUSLAK and SESMAN filed an Answer to a lawsuit that had been filed by SUNRISE's carrier, QBE, for declarative relief. In Answering the QBE suit DUSLAK and SESMAN claimed that they were entitled to defense under the QBE policy as DUSLAK and SESMAN claim they were SUNRISE employees. Because of the actions of DUSLAK and SESMAN, SUNRISE moved to alter or amend the Judgment in this matter, and subsequently requested the Court set the settlement aside. SUNRISE's motion was not based on anything SIMONE did, nor was it based on any action taken by any of the settling parties.

SIMONE agrees with SCARCELLI and the other settling parties that this matter that was settled in October 2019 to the satisfaction of all parties should not be reopened simply because SUNRISE does not want to answer the claims of DUSLAK and SESMAN. The active parties to the settlement still agree that the active Defendants were released excluding DUSLAK and SESMAN, and that the settlement SIMONE's rights against DUSLAK and SESMAN were not impacted by the settlement. Indeed, SIMONE still agrees that the Judgment was entered against DUSLAK and SESMAN as individuals because of the agreement that DUSLAK and SESMAN were independent contractors and not employees of SUNRISE.

As none of the active parties to the settlement have breached or sought to otherwise alter the settlement agreement as set forth on the record on October 18, 2019, this matter should remain closed and SUNRISE's motions should be denied. This is of particular importance given that if the Court grant's SUNRISE's request to set the settlement aside SIMONE, a 78-year-old retiree with very limited means, may be required to pay over \$350,000.00 to the Defendants in this matter, which SIMONE has no way to pay. ***It would certainly be unfair to place such an onerous burden on SIMONE due to the actions of DUSLAK and SESMAN, which SIMONE neither committed nor caused.***

The above notwithstanding, as the Court has taken SUNRISE's motion under advisement, it remains a possibility that this matter may be reopened. SCARCELLI therefore filed a suggestion of death on the record. Under NRCP 25, if a party dies and the claim is not thereby extinguished, any party may file a motion for substitution of any deceased party. If a motion for substitution is not made within the first one hundred and eighty (180) days of receiving the Suggestion of Death upon the Record, the action shall be dismissed as to the deceased party. SIMONE therefore filed a motion for substitution and has thus satisfied his obligations under NRCP 25. As a motion has been made well within 180 days after service of the suggestion of death, the claims against SCARCELLI must not be dismissed.

SIMONE has recommended that the Court substitute the individuals who filed the suggestion of death. Should the Court, or any other party to this matter, believe some other individual should be substituted instead, SIMONE would not oppose the same.

///

///

///

CONCLUSION

For the foregoing reasons Plaintiffs' Motion for Substitution of Party should be GRANTED and the Court substitute the filing party, David Clark, Esq., and Julie Funai, Esq., as the successor and/or representative of Defendant SCARCELLI so this matter may proceed as envisioned in NRCP 25(a)(1).

DATED this 15th day of March, 2021

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ *David Sampson*

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Fax No: 888-209-4199

Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, LLC., and that on this 15th day of MARCH, 2021, I served a copy of the foregoing **REPLY** on all the remaining parties in this matter via the court's electronic online filing system and as follows:

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

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

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

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

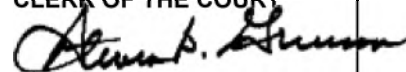
WILL LEMKUL, ESQ.
CHRISTOPHER A. TURTZO, ESQ.
3770 Howard Hughes, Pkwy Suite 170
Las Vegas NV 89169
Attorney for Defendant
IES RESIDENTIAL INC. and
COX COMMUNICATIONS

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

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

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

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Steven D. Grierson
CLERK OF THE COURT



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

Attorneys for Intervenor
QBE Insurance Corporation

DISTRICT COURT

CLARK COUNTY, NEVADA

SIMONE RUSSO,	)	Case No.: A753606
	)	Dept: XVI
Plaintiff,)	
	)	REQUEST FOR JUDICIAL NOTICE
vs.)	
)	
COX COMMUNICATIONS LAS VEGAS,)	
INC., et al.)	
)	
Defendants.)	

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

Currently pending before this Court are the following three (3) motions:

- QBE's Motion to Intervene and Enforce Settlement
- Sunrise HOA's Motion to Set Aside The Judgment
- Russo's Motion to Enforce Settlement

Request is made that this Court take judicial notice of the following documents filed and/or served in connection with the parallel Federal Court proceeding:

Exhibit 20 - Emergency Motion filed in the Federal Court. Dkt. No 45.

Exhibit 21 - Joinder filed in connection with the Emergency Motion. Dkt. No. 46.

Exhibit 22 - Opposition filed in connection with the Emergency Motion. Dkt. No. 48.

Exhibit 23 - Response filed in connection with the Emergency Motion. Dkt. No. 49.

Exhibit 24 - Reply filed in connection with the Emergency Motion. Dkt. No. 50.

Exhibit 25 - Correspondence from counsel for Duslak and Sesman

Per Exhibit 25, counsel for Duslak and Sesman states as follows:

My clients are seeking to amend their pleadings to add claims against PW James and Amanda Davis based on pleadings and an affidavit in the underlying case. Please advise if your clients are agreeable to stipulate to the same. I will need to file a motion for the same if I do not hear back from everyone by tomorrow.

Meanwhile, per Exhibit 26, counsel for Duslak and Sesman contends as follows:

Duslak and Sesman recently became aware of improper motion practice and a fraudulent affidavit in the underlying matter that requires an amendment to the pleadings to add one party, Amanda Davis, and to add claims against QBE and Sunrise regarding these issues.

One of the improper motions in the underlying matter was a motion for summary judgment by Sunrise and against Russo, wherein Sunrise, through QBE's hand-picked counsel, falsely claimed Duslak and Sesman were not Sunrise employees. On August 10, 2018, in support of their Reply to Sunrise's Motion for Summary Judgment, Sunrise and QBE produced an affidavit from one AMANDA DAVIS. See Affidavit, attached hereto as Exhibit "1." Ms. Davis' affidavit fraudulently attested that "based upon...personal knowledge" she knew that Counterclaimants Duslak and Sesman were independent contractors and "kept their own hours, had their own equipment and had a wide amount of discretion to perform their own duties," and that "Sunrise gave them basic projects such as lawn maintenance and then they determined the means in which to go about them."

This affidavit by Ms. Davis was erroneous and fraudulent and QBE, SUNRISE and AMANDA DAVIS knew that this affidavit was untruthful in whole or in part.

Request is made this this Court take judicial notice of these documents as well as the balance of documents filed and/or served in the parallel Federal Court proceeding.

Dated: March 20, 2021

MORALES FIERRO & REEVES

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

Exhibit 20

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

5 Attorneys for Plaintiff/Counter-Defendant
 QBE Insurance Corporation
 6

7
 8 UNITED STATES DISTRICT COURT
 9 DISTRICT OF NEVADA

10 QBE INSURANCE CORPORATION,	)	Case No.: 2:20-cv-02104-RFB-EJY
11 Plaintiff,	)	EMERGENCY MOTION TO STAY
12 vs.	)	AND/OR EXTEND PRETRIAL
13 SIMONE RUSSO, et al.	)	DEADLINES
14 Defendants.	)	FIRST REQUEST
15	)	ORAL ARGUMENT REQUESTED
16 and related cross-claims)	

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

18 Plaintiff and Counter-Defendant QBE Insurance Corp. ("QBE") hereby moves on an
 19 emergency basis to stay this case or, in the alternative, to extend all pretrial deadlines.

20 A Court's power to stay is incidental to the inherent power of every court to control the
 21 disposition of the causes of action on its docket with economy of time and effort for itself, for
 22 counsel, and for litigants. *Short v. Sierra Nevada Corp.*, 2021 WL 735645 (D. Nev. 2021), see also
 23 *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979). Meanwhile,
 24 emergency relief is available per Local Rule 7-4 based on a proper showing.

25 The requested stay and/or extend deadlines is made on an emergency basis based on the
 26 following considerations:

- 27 • This matter is an insurance coverage dispute arising from a default judgment;
- 28 • As explained in a motion to dismiss filed with this Court, motions have been filed in

the underlying matter challenging the default judgment as invalid and void.

See Dkt. Nos. 24, 38, 41.

- Per a March 3, 2021 hearing held in the underlying matter, the Court there took the motions under submission with no timetable regarding the issuance of a ruling. See Exhibit A.
- This Court recently scheduled dates that are close in proximity, including an April 2021 deadline for expert disclosures. Dkt. No. 44.
- Based on these deadlines, counsel for parties in this case have requested dates for depositions and have threatened to unilaterally notice party depositions so as to cause substantial work and burden to all parties and counsel. See Exhibit B.
- If the court in the underlying matter vacates the default judgment, the claims at issue in this case become moot. Conversely, if the court in the underlying matter affirms the default judgment, QBE's motion to dismiss becomes moot. Dkt. No. 24. The preservation of judicial resources, therefore, is furthered by staying this case.
- Efforts to meet and confer regarding this issue have been unsuccessful despite best efforts. See Exhibit B.

Contact information for counsel for all parties is as follows:

Counsel For Plaintiff QBE: William C. Reeves
Morales, Fierro & Reeves
600 S. Tonopah Drive, Suite 300
Las Vegas, NV 89106
702/699-7822

Counsel for Defendant Russo: David Sampson
L/O David Sampson
630 South 3rd Street
Las Vegas NV 89101
702/605-1099

Counsel for Defendants Duslak and Sesman: Kimball Jones
Bighorn Law
2225 E. Flamingo Road, Bldg 2
Las Vegas, NV 89119
702/541-9088

///

///

Counsel for Third Party Defendant Sunrise Villas IX HOA: Shannon Splaine
Lincoln Gustafson
3960 Howard Hughes Pkwy., Suite 200
Las Vegas, NV 89169
702/257-1997

Accordingly, for the reasons set forth herein, it is respectfully requested that the motion be granted and that either this case be stayed or the pretrial deadlines be extended.

Dated: March 4, 2021

MORALES FIERRO & REEVES

By /s/ William C. Reeves
William C. Reeves
600 S. Tonopah Dr., Suite 300
Las Vegas, NV 89106
Attorneys for QBE Ins. Corp.

Supporting Declaration

I. William reeves, declare as follows:

1. I am an attorney with Morales Fierro & Reeves, counsel for Plaintiff.
2. The information set forth in the instant motion is true and correct based on personal knowledge.
3. Efforts to meet and confer with counsel were unsuccessful as evidenced by Exhibit.

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

Executed in Concord, California on the date specified below.

Dated: March 4, 2021



William C. Reeves

Exhibit A

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

Location : District Court Civil/Criminal Help

REGISTER OF ACTIONS

CASE NO. A-17-753606-C

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

§
§
§
§
§
§

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

PARTY INFORMATION

Lead Attorneys

Cross Claimant	Bushbaker, Kevin	Anthony P. Sgro <i>Retained</i> 702-384-9800(W)
Cross Defendant	Cox Communications Las Vegas, Inc. <i>Doing Business As</i> Cox Communications	William A. Lemkul <i>Retained</i> 702-405-8100(W)
Cross Defendant	IES Residential Inc	William A. Lemkul <i>Retained</i> 702-405-8100(W)
Cross Defendant	Scarcelli, J Chris	David A. Clark <i>Retained</i> 7023822200(W)
Cross Defendant	Sunrise Villas IX Homeowners Association	Leonard T. Fink <i>Retained</i> 7028040706(W)
Defendant	Bushbaker, Kevin	Anthony P. Sgro <i>Retained</i> 702-384-9800(W)
Defendant	Cox Communications Las Vegas, Inc. <i>Doing Business As</i> Cox Communications	William A. Lemkul <i>Retained</i> 702-405-8100(W)
Defendant	Duslak, Richard	
Defendant	IES Residential Inc	William A. Lemkul <i>Retained</i> 702-405-8100(W)
Defendant	PWJames Management & Consulting LLC	
Defendant	Scarcelli, J Chris	David A. Clark <i>Retained</i> 7023822200(W)
Defendant	Sesman, Justin	
Defendant	Sunrise Villas IX Homeowners Association	Leonard T. Fink <i>Retained</i> 7028040706(W)

Intervenor **QBE Insurance Corporation**

William C. Reeves
Retained
7026997822(W)

Plaintiff **Russo, Simone**

David F. Sampson
Retained
702-605-1099(W)

EVENTS & ORDERS OF THE COURT

03/03/2021 | **All Pending Motions** (1:30 PM) (Judicial Officer Williams, Timothy C.)

Minutes

03/03/2021 1:30 PM

- APPEARANCES CONTINUED: Julie Funai, Esq. present for Deft. Chris Scarcelli. Jennifer Arledge, Esq. present for Deft. Kevin Bushbaker. DEFENDANT'S MOTION TO SET ASIDE AND/OR AMEND JUDGMENT...JOINDER TO MOTION TO SET ASIDE AND/OR AMEND JUDGMENT...PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT Hearing held telephonically. Colloquy regarding impact of pending decision on QBE s Motion to Intervene including pendency of related federal action. Mr. Reeves withdrew joinder. Court so noted. Arguments by counsel regarding Motion to Set Aside and Motion to Enforce. Court stated will review matters; decision forthcoming. Court stated will first issue decision on pending Motion to Intervene and may invite comment from moving counsel if granted.

[Parties Present](#)

[Return to Register of Actions](#)

Exhibit B

William Reeves

From: David Sampson <davidsampsonlaw@gmail.com>
Sent: Thursday, March 04, 2021 10:22 AM
To: William Reeves
Cc: Kimball Jones; Shannon Splaine; Amanda Nalder; Erick Finch
Subject: Re: QBE v. Russo (Sunrise Villas HOA)

I do not see where anyone suggested that the pending motions "impact nothing". I do see where Mr. Jones said he does not believe the pending motions are a sufficient basis to stay discovery.

Additionally I disagree with your assertion that Judge Williams gave "no timetable for a ruling". As I noted in my prior email, "During the hearing yesterday Ms. Splaine advised Judge Williams of the looming deadlines in the Federal action. Judge Williams said he would get a decision out in time to permit us to meet those deadlines. I agree that a stay is not warranted."

My position on the matter has not changed.

Thank you,



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On Thu, Mar 4, 2021 at 10:13 AM William Reeves <wreeves@mfrlegal.com> wrote:

Not following.

Your colleague suggests that the pending motions before Judge Williams impact nothing (which is non-sensical and absurd) while you ignore the fact that Judge Williams provided no timetable for a ruling.

Meanwhile, you have each asked for dates for depositions that will be unnecessary if the HOA's motion is granted.

Unless you each agree to stand down on depositions and written discovery until Judge Williams issues a ruling, we will seek a stay.

I remain reachable per below at our CA office if either of you want to discuss. Thanks.

William C. Reeves

MORALES • FIERRO • REEVES

600 S Tonopah Drive, Suite 300

Las Vegas, NV 89106

702/699-7822

CA Office:

2151 Salvio Street, Suite 280

Concord, CA 94520

925/288-1776

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

Sent: Thursday, March 04, 2021 9:53 AM

To: William Reeves

Cc: Kimball Jones; Shannon Splaine; Amanda Nalder; Erick Finch

Subject: Re: QBE v. Russo (Sunrise Villas HOA)

During the hearing yesterday Ms. Splaine advised Judge Williams of the looming deadlines in the Federal action. Judge Williams said he would get a decision out in time to permit us to meet those deadlines. I agree that a stay is not warranted.

Thank you,



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On Thu, Mar 4, 2021 at 9:18 AM William Reeves <wreeves@mfrlegal.com> wrote:

With the understanding that your position below was expected, let me know if you wish to expound on your position below since we believe strongly otherwise and will be involving the Court.

I am reachable per below if you would like to discuss.

Thanks.

William C. Reeves

MORALES • FIERRO • REEVES

600 S Tonopah Drive, Suite 300

Las Vegas, NV 89106

702/699-7822

CA Office:

2151 Salvio Street, Suite 280

Concord, CA 94520

925/288-1776

From: Kimball Jones [mailto:kimball@bighornlaw.com]

Sent: Thursday, March 04, 2021 9:01 AM

To: William Reeves

Cc: Shannon Splaine; Amanda Nalder; Erick Finch; David Sampson

Subject: Re: QBE v. Russo (Sunrise Villas HOA)

Thank you for the update. Regarding any hold or stay, I disagree that the pending decision by the state court is a sufficient basis to stay any discovery.

On Thu, Mar 4, 2021 at 7:31 AM William Reeves <wreeves@mfrlegal.com> wrote:

As you likely heard, the Court in the underlying matter took the pending motions under submission with no timetable.

Given that the claims at issue in this case are all derivative of and contingent on the the outcome of these motions, we propose a hold on discovery until the Court rules.

David/Kimball - Please advise if you will stipulate to a hold on discovery. If not, we will involve the Court.

All rights remain reserved.

William C. Reeves

MORALES • FIERRO • REEVES

600 S Tonopah Drive, Suite 300

Las Vegas, NV 89106

702/699-7822

CA Office:

2151 Salvio Street, Suite 280

Concord, CA 94520

925/288-1776

From: Kimball Jones [mailto:kimball@bighornlaw.com]

Sent: Monday, March 01, 2021 12:40 PM

To: David Sampson

Cc: William Reeves; Shannon Splaine; Amanda Nalder; Erick Finch

Subject: Re: Russo

Greetings everyone,

We need dates as soon as possible for the depositions of the following individuals:

QBE

30(b)(6) Witness

Any/All Claims Handlers involved in the handling of Dr. Russo's claim.

Sunrise

30(b)(6) Witness

President Rita Ehresman

Vice President Marie Spencer

Secretary John Morales

Additionally, Amanda Davis, Penny Frederick and Allan Frederick were employed by PW James and either claimed to have relevant knowledge or were present at relevant Sunrise board meetings. Please advise if QBE or Sunrise intend to represent them related to this case and/or if you have possession of their contact information. Also, I do not know who we should go to for the deposition of Leonard Fink, Esq., as he was hired/paid by QBE, but represented Sunrise. Please advise regarding the same.

If we do not hear back regarding availability for the 30(b)(6) and other party depositions noted above by Monday, March 8, 2021, we will schedule the same at our convenience. If we do not hear back regarding Amanda, Penny and/or Allan, we will reach out and schedule the same directly.

If there is any concern or misunderstanding, please let me know as soon as possible.

On Mon, Mar 1, 2021 at 11:30 AM David Sampson <davidsampsonlaw@gmail.com> wrote:

In today's hearing with the Magistrate you mentioned having sent discovery that may relate to whether the underlying judgment is void. Our office has not received any discovery requests directed to Dr. Russo. We did receive a copy of discovery requests that were directed to Defendants Duslak and Sesman. If there has been any discovery directed to Dr. Russo please provide us with a copy of the same.

In copying this email to all involved parties, we also note that we have not received any discovery from any party that was directed to Dr. Russo. If any such discovery has in fact been sent, please provide us with a copy of the same.

Thank you,

--

David Sampson, Esq.

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

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

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

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Phone: (702) 605-1099

Fax: (888) 209-4199

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

Thank you.

--

Very Warmest Regards,

Kimball Jones, Esq.

BIGHORN LAW

2225 E. Flamingo Ave.

Bld 2, Ste 300

Las Vegas, NV 89119

P: [702-333-1111](tel:702-333-1111)

F: [702-507-0092](tel:702-507-0092)

kimball@bighornlaw.com

www.bighornlaw.com

--

Very Warmest Regards,

Kimball Jones, Esq.

BIGHORN LAW

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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)

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Thank you.



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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)

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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.

Exhibit 21

SHANNON G. SPLAINE, ESQ.
Nevada Bar No. 8241
LINCOLN, GUSTAFSON & CERCOS, LLP
ATTORNEYS AT LAW
3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Telephone: (702) 257-1997
Facsimile: (702) 257-2203
ssplaine@lgclawoffice.com

Attorneys for Third-Party Defendant,
SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

QBE INSURANCE CORPORATION,
individually,

Plaintiff,

v.

SIMONE RUSSO, RICHARD DUSLAK and
JUSTIN SESMAN,

Defendants.

RICHARD DUSLAK and JUSTIN SESMAN,

Counterclaimants,

v.

QBE INSURANCE CORPORATION,

Counterdefendant.

RICHARD DUSLAK and JUSTIN SESMAN,

Third-Party Plaintiffs,

v.

COMMUNITY ASSOCIATION
UNDERWRITERS OF AMERICA, INC.;
SUNRISE VILLAS IX HOMEOWNERS'

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

**THIRD-PARTY DEFENDANT SUNRISE
VILLAS IX HOMEOWNERS'
ASSOCIATION'S JOINDER TO
PLAINTIFF/COUNTER-DEFENDANT
QBE INSURANCE CORPORATION'S
EMERGENCY MOTION TO STAY
AND/OR EXTEND PRETRIAL
DEADLINES**

FIRST REQUEST

ORAL ARGUMENT REQUESTED

ASSOCIATION; DOES I-X AND ROE BUSINESS ENTITIES I-X,

Third-Party Defendants.

COME NOW, Third-Party Defendant, SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION ("SUNRISE"), by and through its counsel of record, the law firm of LINCOLN, GUSTAFSON & CERCOS, LLP, and hereby joins Plaintiff/Counter-Defendant QBE INSURANCE CORPORATION's Emergency Motion to Stay and/or Extend Pretrial Deadlines [Dkt. No. 45], filed March 4, 2021.

The arguments presented to the Court in Plaintiff/Counter-Defendant QBE INSURANCE CORPORATION's Emergency Motion to Stay and/or Extend Pretrial Deadlines are equally applicable to SUNRISE. This Joinder incorporates and asserts all the arguments contained in Plaintiff/Counter-Defendant QBE INSURANCE CORPORATION's Emergency Motion to Stay and/or Extend Pretrial Deadlines, as though fully restated herein.

As mentioned during the recent Court hearing, SUNRISE filed its Answer to the Third-Party Complaint on February 3, 2021. Thus, SUNRISE is a new party to the case. As mentioned during the hearing earlier this week:

- Prior to filing its Answer, SUNRISE counsel asked the other parties about additional time as a new party, which were denied by the other defense parties;
- To date, DUSLAK and SESMAN have not provided any medical records to support their \$1 million damages claim for mental pain, suffering and anguish which are alleged against SUNRISE;
- DUSLAK and SESMAN's failure to provide any medical records or evidence to support the alleged personal injury related claims prevents SUNRISE from assessing the alleged claims and prejudices SUNRSIE from being unable to determine which medical experts, if any, are necessary to respond to the claims, conduct any IMEs, and prepare expert reports by the current deadline;
- SUNRISE is being rushed to search for records, assess any privilege that many be involved due to the private financial information of those living in the community,

efforts to locate former board members and potential witnesses to matters and claims that are up to seven years ago to address the claims in this case to prepare for expert reports approximately two months after SUNRISE filed its appearance;

- DUSLAK and SESMAN have failed to allege with specificity the fraud allegations that will be subject to motion practice as to the claims against the HOA as to when they allegedly advised the HOA of the lawsuit and the alleged response to determine if such persons had authority to bind the HOA; and
- DUSLAK and SESMAN have not provided any tax returns, W2s, check stubs or other records to support the claims against SUNRISE despite affirmative claims in the pleadings that they were provided such documents.

The State Court had not ruled on the Motion to Intervene by QBE prior to the hearing yesterday. Due to the pending Federal Court deadlines, SUNRISE advised the State Court of the urgency of the motions being heard and a ruling. The State Court took the matter under advisement, but noted that the Court will rule on the Motion to Intervene first, and if granted, will allow for additional oral arguments by QBE before any rulings on the other matters. Thus, it is possible that a ruling will not be provided for a few weeks, which impacts SUNRISE as it is being rushed to conduct discovery, locate witnesses, produce records, and determine expert needs in an extremely expedited manner. The impact of the State Court rulings significantly affect SUNRISE, because SUNRISE believed it resolved the claims, yet is being sued a second time for released claims and liability.

SUNRISE reserves the right to bring any oral arguments of counsel at the time of the hearing on this matter that may be permitted by the Court.

DATED this 5th day of March, 2021.

LINCOLN, GUSTAFSON & CERCOS, LLP

/s/ Shannon G. Splaine

SHANNON G. SPLAINE, ESQ.

Nevada Bar No. 8241
 3960 Howard Hughes Parkway, Suite 200
 Las Vegas, Nevada 89169
 Attorneys for Third-Party Defendant,
 SUNRISE VILLAS IX HOMEOWNERS'
 ASSOCIATION

QBE Insurance Corporation v. Simone Russo, et al.
Case No. 2:20-cv-02104-RFB-EJY

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that I am an employee of LINCOLN, GUSTAFSON & CERCOS, LLP, and that on this 5th day of March, 2021, I did cause a true and correct copy of the foregoing **THIRD-PARTY DEFENDANT SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION'S JOINDER TO PLAINTIFF/COUNTER-DEFENDANT QBE INSURANCE CORPORATION'S EMERGENCY MOTION TO STAY AND/OR EXTEND PRETRIAL DEADLINES** to be served via the CM/ECF filing system to all parties on the service list as follows:

Marc J. Derewetzky, Esq.
Ramiro Morales, Esq.
William C. Reeves, Esq.
600 S. Tonopah Drive, Suite 300
Las Vegas, NV 89106
mdewetzky@mfrlegal.com
rmorales@mfrlegal.com
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Attorneys for QBE Insurance Corporation

David F. Sampson, Esq.
LAW OFFICE OF DAVID SAMPSON, LLC
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Attorneys for Simone Russo

Kimball J. Jones, Esq.
Evan K. Simonsen, Esq.
BIGHORN LAW
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Las Vegas, NV 89119
kimball@bighornlaw.com
evans@bighornlaw.com
Attorneys for Richard Duslak and Justin Sesman

/s/ Staci D. Ibarra

Staci D. Ibarra, an employee
of the law offices of
Lincoln, Gustafson & Cercos, LLP

Exhibit 22

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

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

QBE INSURANCE CORPORATION

Plaintiff,

vs.

SIMONE RUSSO, RICHARD DUSLAK and
JUSTIN SESMAN

Defendants.

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

**OPPOSITION TO EMERGENCY
MOTION TO STAY AND/OR
EXTEND PRETRIAL DEADLINES
(ECF No. 45)**

Defendant SIMONE RUSSO (“RUSSO”) by and through his counsel of record DAVID SAMPSON, ESQ., of THE LAW OFFICE OF DAVID SAMPSON, LLC., hereby opposes Plaintiff’s emergency motion to stay and/or extend pretrial deadlines (ECF No. 45), which the Court has construed as an emergency motion to stay discovery.

As Plaintiff’s motion acknowledges, there is currently a valid enforceable default Judgment in favor of Defendant SIMONE RUSSO, and against Defendants RICHARD DUSLAK and JUTIN SESMAN. *See*, Exhibit “1”. This Judgment has been in place for well over a year. On January 21, 2021 SUNRISE VILLAS IX HOA filed a motion to set aside and/or amend the judgment. Defendant RUSSO filed an opposition which noted, *inter alia*, that under NRCP 59(e) “A motion to alter or amend a judgment must be filed no later than 28 days after service or written

notice of entry of judgment.” As SUNRISE’s motion was filed 401 days after notice of entry of judgment was served on SUNRISE, the motion to alter or amend is not permitted.

SUNRISE’s motion in state court seeks to punish SIMONE RUSSO and strip him of the rights he has stemming from the duly entered default judgment, as well as rights he has stemming from the settlement agreement with SUNRISE. SUNRISE asks that SIMONE be stripped of those rights as a result of claims DUSLAK and SESMAN have made in the instant declaratory relief action QBE chose to file. As it would be unconscionable for the state court to punish SIMONE RUSSO for QBE’s choice to file the instant declaratory relief action, and for the actions of DUSLAK and SESMAN in defending and pursuing their rights in the said action, this matter should not be stayed pending the state court’s decision.

On March 3, 2021 state court Judge Timothy Williams heard argument on SUNRISE’s motion. *See* Exhibit “A” to ECF Document No. 45. At the close of the hearing SHANNON SPLAINE, ESQ., counsel for SUNRISE in the instant action, advised Judge Williams that the Court in the instant declaratory relief matter had set discovery deadlines that were currently pending. *See*, Exhibit “B” to ECF Document No. 45 at P. 1. Judge Williams stated that he would issue a decision in time to permit the parties in the declaratory relief action to meet all the deadlines set in the declaratory relief action. *Id.*

There is no cause to stay the instant action. The default judgment has not been amended or set aside. QBE’s motion appears to seek a short stay, however given the gravity of this matter it is anticipated Judge Williams’ order in the state court action will be appealed no matter what the order states, which would result in this matter being potentially stayed for years even through the default judgment is valid and has not been altered or amended. Certainly, if the state court sets aside the duly entered judgment against DUSLAK and SESMAN, this Court could consider

staying the matter while an appeal proceeds on the state court's decision. At this point however, as the judgment remains valid and enforceable, there is no cause to stay the instant proceedings.

Plaintiff directs the Court to *Short v. Sierra Nevada Corp.*, 2021 WL 735645 (D. Nev. 2021) to support its request for a stay. *Short* however is not applicable to the facts of the instant matter. In *Short v. Sierra*, the District Court Judge notes that a case in Southern Florida was pending "with the same claims and parties". The Court noted "If this Court were to proceed at this time, then the Court would duplicate expenditures of judicial resources and possibly result in contradictory opinions between the courts." The Court therefore stayed the Nevada matter pending the Florida court ruling on the same case with the same claims and parties. The instant matter does not involve the same claims and parties as the state court action. As Judgment is currently entered against DUSLAK and SESMAN, there is no cause to stay the instant action.

Plaintiff next directs the Court to *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857 (9th Cir, 1979). The Court in *Leyva* noted that it may be efficient to stay an action "pending the resolution of independent proceedings which bear upon the case." *Leyva* involved a matter in which an arbitration was proceeding and had not yet concluded. This is quite distinct from the instant matter which involved a duly entered Judgment in state court, which SUNRISE has not asked to amend over a year after it was entered. Plaintiff does not direct this Court to any matter in which a stay of discovery in a Federal Action was warranted based on an attempt to set aside a matter that had already been resolved and in which judgment had been duly entered.

Plaintiff next directs the Court to "Local Rule 7-4". LR 7-4(b) notes that "Emergency motions should be rare. A party or attorney's failure to effectively manage deadlines, discovery, trial, or any other aspect of litigation does not constitute an emergency." QBE was fully aware of the existence of the duly entered state court judgment in this matter, and that said Judgment had

been entered on December 17, 2019. If QBE or its insured SUNRISE wanted to move to alter or amend the Judgment it should have so prior to filing the instant declaratory relief action. As QBE chose to file the instant declaratory relief action and then thereafter seek to alter or amend the duly entered Judgment in the state court matter, QBE and/or its attorney(s) failed to effectively manage the deadlines in this matter and now seek “emergency” relief to stay this matter to resolve issues that, if they in fact needed to be resolved, should have been addressed prior to the filing of the instant declaratory relief matter.¹

CONCLUSION

As the state court Judgment stands as a valid and enforceable Judgment there is no reason to stay discovery in the instant matter.

DATED THIS 10th day of March, 2021.

THE LAW OFFICE OF DAVID SAMPSON, LLC.

By: /s/ David Sampson

David Sampson, Esq.
Nevada Bar No. 6811
630 South 3rd Street
Las Vegas, NV 89101
Attorney for SIMONE RUSSO

¹ QBE has filed a motion to intervene in the state court matter and attempted to join SUNRISE’s motion.

CERTIFICATE OF SERVICE

I certify that I am an employee of THE LAW OFFICE OF DAVID SAMPSON, and that on this 10th day of March, 2021, I served a copy of the foregoing **OPPOSITION** through the Court's ECF filing system on all parties to this matter, including:

KIMBALL JONES, ESQ. Nevada Bar No.: 12982 BIGHORN LAW 2225 E. Flamingo Rd. Building 2, Suite 300 Las Vegas, Nevada 89119 Email: Kimball@BighornLaw.com Evans@BighornLaw.com Attorneys for Defendants/Counterclaimants/Third-Party Plaintiffs	WILLIAM C. REEVES [Bar No.8235] Email: wreeves@mfrlegal.com RAMIRO MORALES [Bar No.: 7101] Email: rmorales@mfrlegal.com MARC J. DEREWETZKY [Bar No. 6619] Email: mderewetzky@mfrlegal.com MORALES, FIERRO & REEVES 600 South Tonopah Drive, Suite 300 Las Vegas, Nevada 89106 Telephone: (702) 699-7822 Facsimile: (702) 699-9455 Attorneys for Plaintiffs/ Counterdefendants QBE INSURANCE CORPORATION
	SHANNON G. SPLAINE, ESQ. Nevada Bar No. 8241 LINCOLN, GUSTAFSON & CERCOS, LLP ATTORNEYS AT LAW 3960 Howard Hughes Parkway, Suite 200 Las Vegas, Nevada 89169 Telephone: (702) 257-1997 Facsimile: (702) 257-2203 ssplaine@lgclawoffice.com Attorneys for Third-Party Defendant, SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

/s/ Amanda Nalder

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

Exhibit 23

1 KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

2 EVAN K. SIMONSEN, ESQ.

3 Nevada Bar No.: 13762

BIGHORN LAW

4 2225 E. Flamingo Rd.

Building 2, Suite 300

5 Las Vegas, Nevada 89119

6 Email: Kimball@BighornLaw.com

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.

**RESPONSE TO PLAINTIFF'S/COUNTER-
DEFENDANT'S EMERGENCY MOTION
TO STAY AND/OR EXTEND PRETRIAL
DEADLINES**

18 RICHARD DUSLAK and JUSTIN SESMAN,

19 Counterclaimants,

20 vs.

21 QBE INSURANCE CORPORATION,

22 Counter-Defendants.
23
24
25
26
27
28

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 **RESPONSE TO PLAINTIFF'S/COUNTER-DEFENDANT'S EMERGENCY MOTION TO**
11 **STAY AND/OR EXTEND PRETRIAL DEADLINES**

12 COMES NOW, Defendants/Counterclaimants RICHARD DUSLAK and JUSTIN SESMAN,
13 by and through their counsel of record, KIMBALL JONES, ESQ. and EVAN K. SIMONSEN, ESQ.,
14 with the Law Offices of **BIGHORN LAW**, and hereby files this Response to Plaintiff/Counter-
15 Defendant QBE Insurance Corporation's Emergency Motion to Stay and/or Extend Pretrial
16 Deadlines.

17 This Response is made and is based upon all of the pleadings and papers on file herein and
18 the attached Memorandum of Points and Authorities.

19 DATED this 10th day of March, 2021.

20 **BIGHORN LAW**

21 By: /s/ Kimball Jones

22 **KIMBALL JONES, ESQ.**

23 Nevada Bar No.: 12982

24 **EVAN K. SIMONSEN, ESQ.**

25 Nevada Bar No.: 13762

26 2225 E. Flamingo Rd.

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Attorneys for Defendants/Counterclaimants

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF RELEVANT FACTS**

3 **A. Introduction.**

4 This case arises out of an underlying matter (*District Court Case No. A-17-753606-C*), wherein
5 Plaintiff/Counter-Defendant QBE Insurance Corporation (*hereinafter "QBE"*) refused to defend and
6 knowingly allowed judgment to be taken against Defendants/Counterclaimants RICHARD DUSLAK
7 and JUSTIN SESMAN (*hereinafter "Duslak and Sesman"*) in the underlying matter. QBE failed to
8 protect Duslak and Sesman, even though it was known that Duslak and Sesman were employees of
9 Plaintiff/Counter-Defendant QBE Insurance Corporation's insured (*Sunrise Villas IX Homeowners*
10 *Association*), and therefore, were entitled to having a proper defense in the underlying matter, provided
11 by Plaintiff/Counter-Defendant QBE Insurance Corporation.
12

13
14 As a result of QBE's breach of contract, bad faith, and other malicious behavior outlined in the
15 pleadings, Judgment was entered against Duslak and Sesman in the amount of \$25,000,000.00, with
16 statutory interest accruing thereon.

17 QBE's Motion borders on disingenuous. Lest the Court should forget, it was QBE that brought
18 this action against Duslak and Sesman. Now that Duslak and Sesman have fought back and
19 demonstrated that it was QBE and Sunrise that failed to protect Duslak and Sesman, QBE asks the
20 Court to allow them to stop discovery into their malicious and fraudulent activities.
21

22 As will be more fully outlined below, QBE and Sunrise have no good faith reason to believe
23 that the State Court will overturn the Judgment duly entered against Duslak and Sesman.
24

25 Furthermore, even if the judgment entered against Duslak and Sesman is overturned, that
26 would not be dispositive with respect to Duslak's and Sesman's causes of action in this case.
27 Assuredly, overturning default against Duslak and Sesman would reduce the amount of damages
28 awarded in the case at bar—but Duslak and Sesman would still have causes of action for damages

1 against both QBE and Sunrise for breach of contract, numerous bad faith allegations, fraud and
2 conspiracy.

3 As such, QBE's and Sunrise's Motion for Stay is not properly granted.

4 **II. LEGAL ARGUMENT AND ANALYSIS**

5 **A. A Stay is not Warranted as there is No Reasonable Chance of Overturning the** 6 **Court's Judgment in State Court.**

7
8 The United States Supreme Court has noted, "A stay is not a matter of right." *Nken v. Holder*,
9 556 U.S. 418, 433 (2009). A party seeking the extraordinary relief of a stay must satisfy a four-factor
10 test, which requires, among other things, a "strong showing that [the stay applicant] is likely to succeed
11 on the merits" and a showing that "the applicant will be irreparably injured absent a stay." *Id.* at 434.
12 Moreover, with respect to irreparable harm, the applicant "must show that there is a reason specific to
13 his or her case, as opposed to a reason that would apply equally well to . . . all cases" why denial of a
14 stay will irreparably harm the applicant. *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011).

15
16 The Nevada Supreme Court's factors in determining the merits of ordering a stay mirror many
17 aspects of the United States Supreme Court's elements:

18
19 In deciding whether to issue a stay, this court generally considers the following factors:
20 (1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;
21 (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is
22 denied;
23 (3) Whether respondent/real party in interest will suffer irreparable or serious injury if
24 the stay is granted; and
25 (4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ
26 petition.

27 *Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 116 Nev. 650, 657, 6 P.3d
28 982, 986 (2000).

29 The United States Supreme Court, dictated its four-factor test as "(1) whether the stay applicant
30 has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be
31 irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other

1 parties interested in the proceeding; and (4) where the public interest lies.” *Nken*, 556 U.S. at 434
2 (*citation and internal quotation marks omitted*).

3 The Ninth Circuit noted that the first element, success on the merits, “[I]t is not enough that
4 the likelihood of success on the merits is ‘better than negligible’ or that there is a ‘mere possibility of
5 relief.’” *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012). “[I]n order to justify a stay, a petitioner
6 must show, at a minimum, that she has a substantial case for relief on the merits.” *Leiva-Perez*, 640
7 F.3d at 968.

9 In the instant matter, Counter-Defendant and Third-Party Defendant have not established that
10 they meet the requirements necessary to be granted the extraordinary relief of a stay. Conversely,
11 Duslak and Sesman, who were named in this action by Counter-Defendant—the same entity that acted
12 in bad faith and operated to hang a \$25,000,000.00 judgment on their own employees’ heads—will be
13 harmed by being stopped from pursuing litigation against QBE and Sunrise.

15 Element No. 1: Whether the object of the appeal or writ petition will be defeated if the stay is
16 denied.¹ Counter-Defendant imagines that it will not be required to ever participate in discovery in
17 this matter if the judgment is overturned in State Court. This is a false hope. As will be more fully
18 outlined in Subsection B, below, Duslak’s and Sesman’s claims remain valid regardless of whether or
19 not the judgment is overturned. The bad acts of QBE and Sunrise, outlined in the pleadings, have
20 already transpired. A reversal of the Court’s orders regarding the Default Judgment could potentially
21 lessen the damages Duslak and Sesman are seeking in this matter, but it will not erase the bad behavior
22 and the right to recover for the same. Any discovery as to QBE’s and Sunrise’s actions will necessarily
23 continue. However, this element is of little consequence as QBE and Sunrise have failed to
24
25
26

27 ¹ Duslak and Sesman will maintain the use of “petitioners” and “respondents” used
28 by the *Hansen* Court. Duslak and Sesman believe that once the State District Court
has made its determination, that Counter-Defendant and Third-Party Defendant will
appeal the district court’s judgment and bring an appeal—which would ensure that
any Stay granted in this case will last for a period of years.

1 demonstrate that they will likely win in the underlying case in State Court, which is a pre-requisite.
2 Certainly, no grounds for the success of their efforts is found in their Motion. As such, the “object”
3 QBE and Sunrise seek to avoid, is one which they will ultimately be required to do. There is no justice
4 in putting off discovery in this matter on an issue QBE and Sunrise have not shown they can win.
5

6 (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied.

7 QBE and Sunrise have not demonstrated that they will suffer irreparable harm. As noted above, QBE
8 started this litigation and its obligation to participate in discovery will remain, even if the State Court
9 overturns the underlying Judgment. All other “harms” are general harms of producing individuals for
10 deposition. This is neither irreparable nor serious. This is a *de minimus* injury which—again—will be
11 incurred whether they win or lose in front of the State Court.
12

13 (3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay

14 is granted. As noted above, Duslak and Sesman were injured when QBE and Sunrise failed to protect
15 their interests. In the subsequent months, their credit has been damaged, they have been subjected to
16 substantial anxiety, and their financial future is ruined—the natural course after a \$25,000,000.00
17 judgment was levied against them. Requiring them to wait months is not reasonable. QBE and Sunrise
18 have not demonstrated that they will likely win the underlying issue and their Motions only serve to
19 push off the proceedings in this matter. QBE cannot bring a suit against already aggrieved parties, and
20 then cry foul and seek to delay these proceedings simply because Duslak and Sesman demanded their
21 rights not be stomped on. Granting a Stay allows records to be “lost,” testimony to be forgotten, former
22 personnel to move. Staying these proceedings victimizes Duslak and Sesman again and decreases their
23 ability to litigate their claims against QBE and Sunrise.
24
25

26 (4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

27 On this element there has been no argument that the underlying judgment—as damaging as it was to
28 Duslak and Sesman—demonstrated any abuse of discretion. QBE and Sunrise fail to even argue the

1 merits of their case before the Court. Rather, QBE and Sunrise present a false dichotomy where either
2 outcome before the State Court will be equally dispositive in the instant case. This is false. Duslak and
3 Sesman's claims remain against QBE and Sunrise, regardless of the State Court's findings.

4 QBE and Sunrise were required to demonstrate a strong chance of winning. "[I]t is not enough
5 that the likelihood of success on the merits is 'better than negligible' or that there is a 'mere possibility
6 of relief.'" *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012). "[I]n order to justify a stay, a petitioner
7 must show, at a minimum, that she has a substantial case for relief on the merits." *Leiva-Perez*, 640
8 F.3d at 968.

9
10 Yet, Counter-Defendant and Third-Party Defendant fail to even argue that it is "possible" that
11 they can overturn the State Court's default judgment.

12
13 The issues before the State Court regarding overturning the Order are similar to the arguments
14 QBE and Sunrise presented to this Court in their Motion to Dismiss Duslak's and Sesman's
15 Counterclaims. As the Court can attest, those enumerated arguments lack any merit and do not
16 constitute any reasonable chance of success.

17 QBE and Sunrise sought to set aside default judgment thirteen (13) months after it was entered
18 by the Court. Their attempt is thus, untimely and meritless under N.R.C.P. 60.

19
20 Furthermore, QBE's arguments that Counsel for Russo and Counsel for Sunrise made some
21 agreement in the underlying case preventing Russo from pursuing the judgment entered against Duslak
22 and Sesman is simply not corroborated anywhere in the record. Conversely, the record is replete with
23 references to Sunrise, through QBE's hand-selected attorney, agreeing that Russo was free to pursue
24 judgment against Duslak and Sesman without any limitations.

25
26 For example, on October 18, 2019 the active parties to the settlement placed the terms of the
27 settlement on the record. See Transcript, attached hereto as Exhibit "A." The record notes that the
28 settlement between the active parties did not include Duslak or Sesman. Counsel for Sunrise, Mr. Fink

1 (*hereinafter* “Fink”), who was selected by and paid by QBE, asked the Court to make a finding of
2 good faith “because of the further actions Mr. Sampson is going to take against the defaulted parties
3 [DUSLAK and SESMAN].” *Id.*, at P. 6 L. 4-9.

4 Counsel for Russo, Mr. Sampson (*hereinafter* “Sampson”) confirmed on the record that the
5 settlement did not release Duslak or Sesman and did not include them. Mr. Sampson made it more
6 than clear, “there are two other parties [DUSLAK and SESMAN] who have been defaulted that we’re
7 still – ***this settlement does not affect them***”. *Id* at P. 6 L. 15-19 (emphasis added).

8
9 When counsel for the various parties then discussed reducing the settlement to writing,
10 Sampson AGAIN confirmed that in drafting any release or the like related to the settlement:

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

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

19 After Sampson asked to make it clear that no releases or any other settlement documents would
20 affect any rights Russo may have against the Duslak and Sesman, Fink then agreed that no releases or
21 settlement documents would affect any rights Russo may have against Duslak and/or Sesman. *Id* at
22 P. 11 L. 21.

23 These were not the only discussions on the record confirming that the settlement did not
24 include Duslak and Sesman. In hearing on November 7, 2019, the parties further discussed the
25 resolution of this matter. See November 7, 2019 Hearing, attached hereto as **Exhibit “B.”** Mr.
26 Sampson began by confirming the agreement that was placed on the record on October 18, 2019, in
27 the following discussion:

28 ///

1 We were in front of your Honor three weeks ago now on Wednesday initially. And we
2 put the settlement on the record and the terms of the settlement on the record. We came
3 back on Friday, found out that the two other -- two other defendants who on Wednesday
4 said they hadn't gotten any confirmation from their client yet because it had just kind of
5 happened and that whole thing. They wanted to check with their clients, call back on
6 Friday, and confirmed their client did agree to do the settlement. ***And so under those
terms – a couple of the terms, one was that – Two of the defendants who were named
in the case who have never filed answers, who have been defaulted were not affected
by the settlement, with the money that was being paid.***

7 THE COURT: And...

8 MR. SAMPSON: And my clients rights --

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

11 MR. SAMPSON: ***Duslak and Sesman are the last names.***

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

13 MR. SAMPSON: So then ***Dr. Russo's rights against those two defaulted individuals
14 would not be affected at all. Everyone agreed.***

15 *Id*, at P. 5 L. 18- P. 6 L. 19 (emphasis added).

16 Sampson then noted that the release Sunrise proposed sought to alter the agreement that the
17 settlement could not affect Russo's rights against Duslak and/or Sesman. Sampson noted, "the release
18 that was provided defines SUNRISE as all employees, independent contractors. It lays out other things
19 that could potentially include DUSLAK and SESMAN. *Id* at P. 9 L. 22-25. Mr. Sampson then stated,
20 "we are not going to include them [DUSLAK and SESMAN] or anyone affiliated with them." *Id* at
21 P. 10 L. 1-3.

22 Fink subsequently stated:

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

27 *Id* at P. 16 L. 14-19.
28

1 Fink continued, "There's never been one bit of evidence in this case that they were employees."
2 Fink then argued that DUSLAK and SESMAN should be included in the release in the event they were
3 SUNRISE employees by arguing "when you settle with an entity, you are settling with the employees
4 too." *Id* at P. 16 L. 23-25. Mr. Fink then stated "the only hang up is whether or not this settlement
5 included Mr. Duslak and Mr. Sesman if they are found to be employees of Sunrise. And I think that's
6 it." *Id* at P. 18 L. 6-9.

8 Sampson demonstrated that there was no meeting of the minds on this part by arguing that the
9 settlement did not include Duslak or Sesman, even if they were found to be employees of SUNRISE.
10 In discussing Fink's proposed release, Sampson stated "And the one that I take issue with is the one
11 that seeks to stop my client from being able to proceed against SESMAN and DUSLAK." *Id* at P. 20
12 L. 13-15. Mr. Sampson continued:

14 And yes, I do know and I understand if you release a party, you typically would be
15 releasing their employees, and board of directors, and those types of things ***unless you***
16 ***clearly indicate otherwise when you put the settlement agreement together. So when***
17 ***we put this on the record, that's why I made it a point to say, none of this settlement***
18 ***involves Sesman or Duslak at all in any of their capacities.*** And if there was an idea
19 of, well, hold on, Sunrise wants all its employees, and there might be a claim that they're
20 employees, so that should have been brought up when we put the terms on the record. It
21 shouldn't have been dropped on me just like they couldn't come up later and say, we
22 want it confidential. Or, and there is language about indemnification and what not,
23 which we'll agree to even though it wasn't specifically put on the record. But if you
24 wanted those -- when I say -- make it a point to mention, and I'm sure had I said, for
25 example, you know, here's so and so, it's the CEO of Cox, we're not releasing any claims
26 against that person, I'm sure Mr. Lemkul would have piped up and said, oh, no, hold on.
27 We don't agree to that. ***We were stippling on the record putting the terms together. So***
28 ***I think it's improper for Sunrise to stand there while we're putting the settlement on***
the record, and I say Sesman and Duslak are not released in any way, shape, or form.
They remain parties. We still have all rights to proceed against them, and that's all
fine and dandy while we're on the record, and then to come back later in the release
and say, except they're not. Because if they're employees they're out. I don't think
they're employees either as I sit here right now. But I've not had a chance to find any of
that stuff out. I have not -- I have no confirmation as to any of that.

Id at P. 20 L. 16 - P. 22 L. 1 (emphasis added).

1 Sampson then argues, “what I proposed says specifically releasing each other as agreed on the
2 record. No more, no less. I don't think anybody should require that my client do any more or any less
3 for any of that . . . And my clients should not be -- my client should not be required to waive any right
4 at all that he -- that he specifically -- especially when he specifically preserved them on the record
5 when we -- when we resolved this thing and put the settlement on the record.
6

7 *Id* at P. 22 L. 15-18; P. 23 L. 3-8.

8 Sampson then concluded that the proposed release language was not agreed to when he stated,
9 “And the term that I had an issue with is this idea that if they’re employees, then Sesman and Duslak
10 are out. ***That was not agreed to.***” *Id* P. 23 L. 12-15. Sampson continued by noting that on October
11 18, 2019 “we put on the record -- ***we're not waiving, releasing, or otherwise affecting anything***
12 ***against Sesman or Duslak.*** I don't think anyone would dispute that . . . it was a pretty significant point
13 that day.” *Id* at P. 25 L. 6-16 (emphasis added).
14

15 The Court then asked, “Mr. Fink, are we disputing that?” *Id* at P. 25 L. 21-22. Mr. Fink
16 answered, “My best recollection is that ***when Mr. Sampson said he was specifically retaining his***
17 ***rights to go against Mr. Sesman and Mr. Duslak, we all agreed to that.***” *Id* at P. 26 L. 2-5 (emphasis
18 added). Mr. Fink further confirmed “So I didn’t – I didn’t jump and say, well, to the extent they’re
19 employees. This wouldn’t cover them. ***So that part is right.***” *Id* at P. 26 L. 7-9 (emphasis added).
20 Fink, despite previously admitting that the settlement did not include Duslak and Sesman, then asked
21 that the settlement nevertheless cover Duslak and Sesman if there was evidence that they were
22 employees—asking for a hypothetical judgment, in other words.
23

24 Mr. Sampson responded:
25

26 All I would ask, again, is the Court to consider, well, you know, ***that should have been***
27 ***brought up on the record. Because I made clear --*** and there is no dispute it sounds
28 like. I made it clear ***we want to preserve all rights against Sesman and Duslak.*** They've
been defaulted. We want to move forward against them. And this release and ***this money***
doesn't go to affecting any of my client's rights against them, period. And the response

1 while we were on the record from Mr. Fink and everybody else was that is correct. *And*
2 *we are in agreement.*

3 And if they were going to raise some kind of, well, hold on. If this, then okay. But if
4 not, then that was the time to do it, and they did not do it. And they did it -- they had a
5 chance on Wednesday and again on Friday. So we can't even blame it on, like, spur of
6 the moment. I didn't have time to consider it. It just got tossed out there. *It was brought*
7 *up specifically, and they agreed. And they can't now turn around and unagree, or try*
8 *to undo it when we said -- again, all I want to do is enforce the terms that were placed*
9 *on the record.* And I don't think my client should be forced to agree to terms that weren't
10 placed on the record, which Mr. Fink is now asking to do.

11 *Id* at P. 28 L. 3 – P. 29 L. 2 (emphasis added).

12 Mr. Sampson then stated:

13 I'm a little concerned if he is so convinced they're not employees why this is a sticking
14 point. Because it shouldn't be. If he's convinced they're not employees, I don't know how
15 it would turn out, as he used the phrase, if they somehow would magically become
16 employees other than perhaps if the carrier goes to Sunrise, and says, you know, I don't
17 know. *Something goes on and all of a sudden that all -- that they come up W-2s that*
18 *were not provided before and Mr. Fink's not aware of, and then we've somehow been*
19 *mislead.*

20 *Id* at P. 29 L. 5-14.

21 Mr. Sampson then reiterated “the terms of the agreement were reached on the record, and we’re
22 just asking no more, no less than what was placed on the record be enforced.” *Id* at P. 29 L. 15-17.

23 The Court then asked if there was some way the matter could be worked out. The Court
24 reiterated “I think it’s always better for parties to come to some sort of resolution.” *Id* at P. 36 L. 15-
25 16. In attempting to reach a resolution Mr. Sampson suggested “Could we perhaps enter a stipulation
26 on the record here and now that for purposes of this litigation they’re not employees?” *Id* at P. 37 L.
27 13-15. Mr. Fink then stated he would “like to think about” Mr. Sampson’s suggestion and “That may
28 take care of all of this.” *Id* at P. 40 L. 4-8.

Before the hearing ended Mr. Sampson stated, “I would ask -- I would ask just -- Mr. Fink has
made a couple of comments today, and I think the Court also echoed them, along the lines of Sesman
and Duslak, *all rights against them*, anybody who insures them, you know, *all of those are preserved.*

1 *They're not affected. I would like to make sure that is crystal clear in whatever iteration we end up*
2 *with."* *Id* at P. 40 L. 16-22 (emphasis added).

3 These exchanges which were held on the record in front of the very judge which QBE hopes
4 will invalidate the Default Judgment entered by the Court, demonstrate that QBE and Sunrise has no
5 hope of the judgment being overturned under N.R.C.P. 60 for being "void." QBE has failed to
6 demonstrate that it has any reasonable chance at success in State Court. As such, Defendant's Motion
7 is properly DENIED.
8

9 **B. A Stay is not Warranted as Duslak and Sesman's Claims Remain Effectual against**
10 **Counter-Defendant and Third-Party Defendants.**

11 For the reasons enumerated above, Counter-Defendant and Third-Party Defendants have no
12 reasonable expectation of prevailing upon the State Court to overturn the Default Judgment entered in
13 this case thirteen (13) months prior.
14

15 Yet, even when the State Court claims are resolved, Duslak and Sesman's claims against QBE
16 and Sunrise, will still remain. Duslak and Sesman have already been harmed by QBE's and Sunrise's
17 failure to protect them. They have all acted in bad faith and harmed Duslak and Sesman, and this is
18 not remedied simply by a hypothetical, and nigh-impossible, revocation of the entered judgment
19 against them.
20

21 Duslak and Sesman still have pertinent claims which they are pursuing against Counter-
22 Defendant and Third-Party Defendant. A delay in allowing deposition, expert testimony, and pursuit
23 of written discovery only serves to harm Duslak and Sesman, who are still pursuing meritable claims
24 against those parties. A Stay should not be granted as Duslak and Sesman have great need to obtain
25 information and testimony in a timely manner, irrespective of whether the Court overturns the Default
26 Judgment entered against Duslak and Sesman. Therefore, a Stay is meritless in this case.
27

28 ///

1 **C. A Postponement of Deadlines is Prejudicial and Unnecessary.**

2 QBE's fallback request is for the Court to extend the deadlines in this case. QBE argues that it
3 is because the Stay could be decided upon near or around the time of some discovery deadlines in
4 April of 2021. However, QBE has failed to demonstrate that there is good cause to extend discovery
5 deadlines in this case.
6

7 "[T]he Court is vested with broad authority to manage discovery and may exercise that
8 discretion to reach the merits of a discovery dispute despite a party's failure to meet its burden."
9 *Krause v. Nev. Mut. Ins. Co.*, 2014 U.S. Dist. LEXIS 14872, 2014 WL 496936 (D. Nev. Feb. 6, 2014).

10 In the instant matter, the *Bateman* factors do not warrant an extension of the discovery
11 deadlines in this case. QBE has not shown that it cannot accomplish the required discovery in this
12 time. QBE's argument appears to center on that it may be inconvenient to oblige the Court's
13 scheduling order, while also attending a hearing in front of the State Court. QBE has not demonstrated
14 that any extension of deadlines is even necessary, let alone warranted. All parties appear able to
15 comply with the discovery deadlines in this case. As such, QBE's Motion is properly DENIED.
16

17 **III. CONCLUSION**

18 For the foregoing reasons, Defendants/Counterclaimants/Third-party Plaintiffs Duslak and
19 Sesman respectfully request this Court Deny QBE's Emergency Motion to Stay and/or Extend Pretrial
20 Deadlines.
21

22 DATED this 10th day of March, 2021.

23 **BIGHORN LAW**

24 By: /s/ Kimball Jones

25 **KIMBALL JONES, ESQ.**

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27 **EVAN K. SIMONSEN, ESQ.**

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CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 10th day of March, 2021, I served a copy of the foregoing ***RESPONSE TO PLAINTIFF'S/COUNTER-DEFENDANT'S EMERGENCY MOTION TO STAY AND/OR EXTEND PRETRIAL DEADLINES*** 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:

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Exhibit 24

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 6
 7

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 QBE INSURANCE CORPORATION,)	Case No.: 2:20-cv-02104-RFB-EJY
11 Plaintiff,	)	REPLY TO RESPONSE TO EMERGENCY
12 vs.	)	MOTION TO STAY AND/OR EXTEND
13 SIMONE RUSSO, et al.	)	PRETRIAL DEADLINES
14 Defendants.	)	DATE: March 19, 2021
	)	TIME: 2:00 p.m. ¹
15 _____)	
16 and related cross-claims)	

17 Plaintiff and Counter-Defendant QBE Insurance Corp. ("QBE") hereby files the following
 18 reply brief in connection with its emergency motion to stay this case or, in the alternative, to extend
 19 all pretrial deadlines. Dkt. No. 45.

20 Introduction

21 While the parties agree that this Court has substantial discretion to manage this case in the
 22 manner it deems appropriate and warranted, disagreement exists regarding if and how that
 23 discretion should be exercised.

24 Defendant Russo contends that no stay is warranted because, in his view, it is preordained
 25 that the State Court will deny the motions seeking to enforce the settlement and set aside the
 26 judgment. Meanwhile, Defendants Duslak and Sesman also opine that the motions will be denied

27 _____
 28 ¹ Counsel for QBE has a conflict with the hearing this Court set by virtue of a binding arbitration. Counsel has raised
 the issue with all parties and will meet and confer regarding this issue.

(ostensibly justifying why they have inexplicably not joined in the efforts to set aside the judgment entered against them) while separately suggesting that claims asserted in this case are unaffected by the judgment such that they will remain to be adjudicated even if the State Court sets aside the judgment.

Neither position is valid and/or warrants the denial of QBE's motion.

While Russo, Duslak and Sesman all believe the motions pending before the State Court will all be denied, each must necessarily concede that this has not yet occurred while the State Court has not provided a timetable for issuing a ruling. See Exhibits C-E attached hereto. It is precisely this delay coupled with the lack of any timetable that serve as the basis for the relief requested. Stated otherwise, the fact that no ruling has yet issued serves as the core and central basis for the relief requested. As the delay itself is undisputed, a stay is warranted.

Meanwhile, the separate argument that Duslak and Sesman have asserted claims in this case that will survive even if the judgment is set aside is belied by their pleading and the allegations asserted therein. Dkt. No. 19. As reflected in the pleading, the judgment serves as the crux of all relief requested. Of significance, neither Duslak nor Sesman have alleged that they have incurred and/or paid any sums in connection with the judgment as well as any other aspect of the State Court matter. Given this, all claims at issue are derivative of the judgment itself.

Even assuming otherwise, no conceivable prejudice exists to staying this case pending the outcome of the motions pending before the State Court. In contrast, substantial prejudice exists to QBE and the HOA if each is required to litigate in a circumstance in which the claims at issue may cease to be valid. Candidly and despite their protestations, Russo, Duslak and Sesman will likewise be prejudiced if this case proceeds and the judgment is set aside.

At bottom, stays are intended to address circumstances in which preservation of resources is warranted. In this case, a hold on aggressive litigation while motions remain pending before the State Court that could obviate any need to litigate itself makes sense for a myriad of reasons, including efficiency, prejudice and preservation of resources.

Accordingly, for the reasons set forth herein, it is respectfully requested that the motion be granted such that this matter is stayed.

Discussion

As conceded by Russo, Duslak and Sesman, a Court's power to stay is incidental to the inherent power of every court to control the disposition of the causes of action on its docket with economy of time and effort for itself, for counsel, and for litigants. *Short v. Sierra Nevada Corp.*, 2021 WL 735645 (D. Nev. 2021), see also *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979).

In opposing the relief requested, Russo argues that since the underlying case involves differing parties, a stay is unwarranted. In making this argument, however, Russo ignores that the dispute between the parties is entirely based on and derivative of the judgment. Given this, if the judgment is set aside, Russo's claims become moot and therefore fail, a strong consideration that weighs heavily in favor of a stay.

While Duslak and Sesman contend that "no reasonable chance" exists to set aside the judgment while QBE and the HOA strongly contend otherwise, the fact that the parties have differing views does not bear on the relief requested. Rather, the request that this matter be stayed is based on the fact that differing views exist such that motions remain pending in connection with the State Court matter.

As stated, the outcome of these motions directly impact the claims at issue in this case as the claims at issue in this case are derivative of the judgment such that the outcome of the motions directly impacts whether the claims at issue remain ripe or become moot. A stay pending the outcome of the motions is both logical and reasonable.

The reliance by Duslak and Sesman to decisional law of the Nevada Supreme Court is puzzling since this matter is pending in Federal Court. Similarly, their citation to the U.S. Supreme Court's *Nken v. Holder* decision is misplaced since the case involved an asylum application and not a civil dispute arising from a contested judgment.

Regardless, even assuming a four (4) part test applies, each prong weighs in favor of granting the stay:

Prong 1: Whether the claims at issue become moot if the judgment is set aside.

Answer: Yes All claims at issue in this case are derivative of the judgment as no claims

1 have been asserted in this case that are independent of the judgment. If the judgment is set aside,
 2 the claims at issue in this case will cease to be ripe and will instead be moot.

3 Prong 2: Will QBE and the HOA sustain harm if the matter is not stayed.

4 Answer: Yes. Russo, Duslak and Sesman all seek to to depose multiple individuals while
 5 the expert disclosure is next month. Substantial prejudice will result if this discovery proceeds and
 6 the judgment is ultimately set aside.

7 Prong 3: Will Russo, Duslak and Sesman be harmed if the matter is stayed.

8 Answer: No. Each seeks monetary damages without any allegation that any sums have been
 9 actually incurred and/or paid. A stay will have no meaningful impact.

10 Prong 4: Are QBE and the HOA likely to prevail.

11 Answer: Yes. As the arguments regarding why the judgment should be set aside, QBE
 12 incorporates by reference herein the entirety of Dkt. No. 24-1, exhibit B thereto and Dkt. No. 41-1,
 13 exhibits C-F. QBE likewise requests that this Court take into consideration the positions set forth in
 14 Exhibits C-E attached hereto.

15 Conclusion

16 For the reasons set forth herein, request is made that this Court stay this matter pending the
 17 outcome of the motions filed in the State Court matter.

18 Dated: March 11, 2021

MORALES FIERRO & REEVES

19
 20
 21 By /s/ William C. Reeves
 22 William C. Reeves
 23 600 S. Tonopah Dr., Suite 300
 Las Vegas, NV 89106
 Attorneys for QBE Ins. Corp.

24 Supporting Declaration

25 I. William Reeves, declare as follows:

26 1. I am an attorney with Morales Fierro & Reeves, counsel for Plaintiff.
 27 2. The information set forth in the instant motion is true and correct based on personal
 28 knowledge.

Exhibit 25

William Reeves

From: Kimball Jones <kimball@bighornlaw.com>
Sent: Thursday, March 18, 2021 5:05 PM
To: William Reeves; Shannon Splaine; Amanda Nalder; David Sampson; Erick Finch
Subject: SAO to Add 3rd Party Defendant

Good Afternoon Everyone,

My clients are seeking to amend their pleadings to add claims against PW James and Amanda Davis based on pleadings and an affidavit in the underlying case. Please advise if your clients are agreeable to stipulate to the same. I will need to file a motion for the same if I do not hear back from everyone by tomorrow.

--

Very Warmest Regards,

Kimball Jones, Esq.

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