

IN THE SUPREME COURT OF THE STATE OF NEVADA

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SUNRISE VILLAS IX HOMEOWNERS  
ASSOCIATION,

Appellant,

vs.

SIMONE RUSSO,

Respondent.

Case No. 83115 Electronically Filed  
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Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S APPENDIX**  
**VOLUME 12, PART 2**

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(Cont. 85)	<u>Exhibit B</u> : Third-Party Plaintiff Justin Sesman's Answers to Third-Party Defendant Sunrise Villas IX Homeowners' Association's First Set of Interrogatories [April 2, 2021]		10	2163-2178
	<u>Exhibit C</u> : Response to Plaintiff's/Counter-Defendant's Motion to Dismiss [February 8, 2021]		10 11	2179-2290 2291-2323
86.	Reply to Sunrise's Latest Request for Judicial Notice	4/15/21	11	2324-2329
	<u>Exhibit 1</u> : Response to Plaintiff's/Counter-Defendant's Motion to Dismiss [February 8, 2021]		11	2330-2474
	<u>Exhibit 2</u> : Reporter's Transcript of Motions dated March 3, 2021		12	2475-2618
87.	Order on Motion to Intervene to Enforce Settlement	4/22/21	12	2619-2630
88.	Order on Motion to Substitute	4/22/21	12	2631-2635
89.	Notice of Entry	4/22/21	12	2636-2638
	<u>Exhibit 1</u> : Order on Motion to Intervene to Enforce Settlement [April 22, 2021]		12	2639-2651
90.	Notice of Entry	4/22/21	12	2652-2654
	<u>Exhibit 1</u> : Order on Motion to Substitute		12	2655-2660
91.	Minute Order: Pending Motions	5/3/21	12	2661-2662
92.	Motion to Amend and/or Modify Order	5/7/21	12	2663-2668
	<u>Exhibit A</u> : Minute Order for March 31, 2021		12	2669-2671
	<u>Exhibit B</u> : April 1, 2021 Email Correspondence		12	2672-2675

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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
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99.	Defendant Sunrise Villas IX Homeowners Association's Motion to Release Exhibits from Evidence Vault on Order Shortening Time	6/1/21	13	2858-2864
	<u>Exhibit 1</u> : Court Minutes re Plaintiff's Application for Judgment by Default on December 17, 2019		13	2865-2866
	<u>Exhibit 2</u> : May 17, 2021 Email Correspondence from Shannon Splaine, Esq. to Peggy Ipsom, court reporter		13	2867-2871
100.	Reply to Opposition to Motion to Amend and/or Modify Order	6/1/21	13	2872-2874
101.	Opposition to Sunrise's Motion to Release Exhibits from Evidence Vault on Order Shortening Time	6/2/21	13	2875-2880
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	<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
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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
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	<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

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106.	Defendant Sunrise Villas IX Homeowners Association's Notice of Filing Exhibits from the Evidence Vault	6/21/21	13	2961-2963
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	<u>Exhibit 1</u> : Medical Treatment Timeline		13	2965-2968
	<u>Exhibit 2</u> : Medical Summary of Plaintiff Simone Russo		13	2969-2970
	<u>Exhibit 3</u> : Medical Records and Billing Records from Center for Disease & Surgery of the Spine		14	2971-3059
	<u>Exhibit 4</u> : Medical Records and Billing Records Kozmary Center for Pain Management		14 15	3060-3210 3211-3235
	<u>Exhibit 5</u> : Medical Records and Billing Records from Pueblo Medical Imaging		15	3236-3246
	<u>Exhibit 6</u> : Medical Records and Billing Records from Desert Radiology		15	3247-3259
	<u>Exhibit 7</u> : Medical Records and Billing Records from SimonMed Imaging		15	3260-3263
	<u>Exhibit 8</u> : Medical Records and Billing Records from Fyzical Therapy and Balance Centers		15	3264-3285
	<u>Exhibit 9</u> : Surgical Recommendation from Dr. Thalgott		15	3286-2387
107.	Notice of Appeal	6/23/21	15	3288-3290
	<u>Exhibit A</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]		15	3291-3310

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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**TRANSCRIPTS**

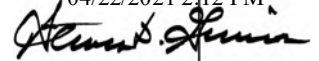
110.	Reporter's Transcript of Hearing Re: Settlement	10/16/19	15	3311-3342
111.	Reporter's Transcript of Hearing Re: Settlement	10/18/19	15	3343-3378
112.	Reporter's Transcript of Hearing Re: Motion to Compel Settlement	11/7/19	15	3379-3434
113.	Reporter's Transcript of Hearing (Telephonic Conference) 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

**ADDITIONAL DOCUMENTS**

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

<b>W</b>	108/24 109/23 110/19 113/2 114/14 114/24 115/11 116/25 118/8	38/12 44/22 50/4 50/12 50/13 50/24 63/21 68/6 83/1 85/13 86/4 88/21 90/25 92/2 98/18 102/12 111/3 115/19	<b>will [23]</b> 10/19 14/12 17/15 26/12 29/3 35/18 35/20 37/25 38/14 38/20 38/25 43/13 55/17 63/25 77/8 82/22 83/11 83/12 85/17 86/13 98/2 101/16 108/20	<b>worry [3]</b> 45/10 45/11 81/12
<b>weeks [1]</b> 86/24	<b>weren't [3]</b> 56/2 76/21 78/9	<b>WHEREOF [1]</b> 118/13	<b>WILLIAM [6]</b> 4/15 6/12 7/23 10/3 12/23 14/10	<b>worth [1]</b> 45/17
<b>weigh [2]</b> 109/10 111/23	<b>WEST [1]</b> 5/5	<b>whether [18]</b> 10/7 16/14 16/16 21/4 23/19 34/12 34/13 63/22 66/16 66/17 84/15 95/22 95/25 96/1 105/16 106/8 106/10 108/24	<b>WILLIAMS [1]</b> 1/18	<b>would [74]</b> 8/23 9/1 9/11 9/16 10/17 10/18 10/19 11/11 13/9 14/13 17/12 19/10 19/13 22/6 24/5 26/13 29/6 29/21 31/25 33/12 37/9 37/12 39/25 41/5 41/6 41/23 44/15 45/4 45/5 45/8 52/3 58/5 59/18 59/19 61/17 68/19 69/14 73/20 75/22 78/10 78/16 78/17 79/25 79/25 81/11 81/14 81/14 83/2 86/2 86/9 86/14 87/6 88/14 88/18 95/20 96/1 99/20 100/15 101/22 101/22 102/21 109/10 109/15 109/19 110/8 110/15 111/2 111/5 112/23 114/11 114/15 114/21 115/6 115/7
<b>well [67]</b> 9/2 10/24 13/25 14/2 15/8 22/19 22/20 24/16 26/17 27/3 27/10 30/1 32/20 34/7 35/15 36/6 37/8 37/11 37/18 40/18 40/21 41/12 45/23 51/25 53/20 55/19 56/9 58/2 58/19 60/17 61/10 61/11 61/18 61/24 62/12 62/13 63/16 68/25 69/13 69/24 75/25 76/10 77/16 80/21 84/22 85/12 86/1 88/8 88/11 89/11 89/15 89/17 90/22 92/8 92/16 96/8 96/12 97/1 97/22 98/14 98/19 100/2 102/18 108/6 112/4 113/5 116/18	<b>what [134]</b> <b>what's [10]</b> 13/9 24/11 25/23 51/13 62/22 68/2 76/4 81/24 81/25 112/12	<b>which [41]</b> 6/21 12/19 18/4 18/5 18/16 19/4 19/10 19/22 20/4 20/7 20/11 23/11 23/13 25/4 25/5 32/19 33/11 33/19 51/17 55/16 62/4 64/25 66/23 68/7 70/17 72/10 72/21 75/3 75/17 79/20 81/11 81/18 81/21 88/15 90/23 96/2 99/16 101/1 101/8 103/6 110/4	<b>win [2]</b> 17/1 25/12	<b>wouldn't [2]</b> 37/9 45/15
<b>went [12]</b> 19/17 22/10 47/6 48/12 55/22 55/22 57/20 60/1 85/10 85/18 106/21 109/24	<b>whatever [23]</b> 12/19 17/23 23/6 23/22 29/15 29/17 30/13 30/14 35/21 37/24 37/25 38/18 39/3 41/20 41/24 44/5 51/19 53/14 89/7 94/15 94/17 108/5 115/23	<b>while [2]</b> 9/22 37/10	<b>without [8]</b> 11/10 11/10 12/15 15/5 23/10 33/5 34/17 104/5	<b>WREEVES [1]</b> 4/21
<b>were [86]</b> 8/1 8/22 10/5 11/14 20/11 20/15 21/5 21/6 21/23 21/25 22/4 22/5 22/8 22/13 22/20 28/9 28/16 28/18 34/3 34/4 36/14 41/5 42/14 42/15 43/24 44/17 45/6 46/11 47/20 48/22 51/16 53/16 54/25 55/1 55/2 55/2 55/4 55/5 55/6 55/12 55/24 56/4 57/14 58/12 62/6 63/6 63/17 65/14 66/8 66/13 70/9 72/7 74/10 74/15 75/3 75/3 75/6 75/12 75/15 77/17 80/1 84/15 89/20 89/21 91/7 97/1 98/10 99/7 99/23 101/12 101/23 102/7 105/6 105/25 106/4 106/8 106/8	<b>whatsoever [5]</b> 29/18 34/18 49/1 53/22 93/19	<b>who [14]</b> 23/19 48/7 65/9 67/17 71/9 71/11 78/20 80/20 96/21 101/19 109/23 110/16 111/10 111/15	<b>WITNESS [1]</b> 118/13	<b>writing [5]</b> 35/15 35/16 38/18 76/22 77/8
	<b>when [78]</b> 12/5 18/8 22/4 25/16 27/12 28/16 29/25 29/25 31/8 31/9 34/11 36/19 36/20 36/22 37/1 37/18 40/14 40/15 41/2 43/10 44/10 45/17 45/20 45/20 45/23 47/23 48/4 48/19 48/21 49/4 53/15 53/16 54/7 55/11 56/23 57/12 57/13 59/1 59/3 63/18 63/25 64/14 66/1 66/2 67/20 77/11 78/22 79/8 79/22 80/1 83/15 84/18 84/18 84/24 85/22 87/24 90/5 90/18 91/9 91/14 91/23 94/11 96/9 97/21 100/18 100/20 101/3 101/12 101/17 103/13 104/2 104/8 105/19 107/11 107/24 113/12 113/20 114/4	<b>whoa [1]</b> 49/16	<b>won't [1]</b> 64/2	<b>writings [1]</b> 35/21
	<b>where [25]</b> 16/19 17/19 18/6 21/22 24/1 27/22 29/20	<b>whole [8]</b> 16/18 18/2 24/18 34/21 66/9 69/19 78/3 107/21	<b>wonder [2]</b> 51/6 95/25	<b>written [9]</b> 56/22 76/10 76/12 76/15 77/13 77/14 77/22 98/6 101/9
		<b>whom [1]</b> 65/9	<b>word [4]</b> 25/24 38/17 85/11 85/19	<b>wrong [7]</b> 8/17 25/24 57/6 72/15 73/2 73/2 95/18
		<b>why [31]</b> 14/8 24/16 25/4 25/5 34/1 34/19 49/16 50/17 51/6 51/8 57/6 68/19 69/8 70/4 80/21 80/22 81/18 83/14 90/5 90/20 94/1 99/20 107/19 108/2 109/4 109/20 110/1 110/1 113/18 115/16 115/25	<b>worded [2]</b> 57/5 60/23	<b>X</b>
			<b>words [6]</b> 21/22 31/18 31/21 32/9 33/3 77/2	<b>XVI [1]</b> 1/3
			<b>work [6]</b> 22/9 37/22 47/24 78/8 79/23 104/11	<b>Y</b>
			<b>worked [2]</b> 17/4 93/7	<b>yeah [17]</b> 8/5 8/8 11/15 13/23 14/7 14/15 16/19 24/20 32/21 37/18 53/21 63/1 81/14 87/9 97/15 100/1 112/4
			<b>working [1]</b> 88/10	<b>year [22]</b> 43/23 44/12 45/22 49/14 50/7 51/21 53/5 56/9 56/11 63/12
			<b>workman [1]</b> 74/22	
			<b>worms [1]</b> 19/14	

<b>Y</b> <b>year... [12]</b> 83/7 83/13 90/3 95/18 98/13 99/21 109/16 110/5 112/15 115/9 115/17 115/19 <b>years [3]</b> 45/2 50/2 56/14 <b>yes [19]</b> 8/3 10/4 10/14 11/3 11/6 11/25 14/14 14/23 14/25 16/3 16/5 26/9 71/25 82/6 82/8 84/12 92/24 98/18 112/3 <b>yesterday [4]</b> 15/19 16/4 50/11 50/15 <b>yet [9]</b> 7/19 47/25 50/16 65/3 74/1 92/3 104/10 111/3 116/12 <b>you [198]</b> <b>you'll [2]</b> 85/3 87/25 <b>you're [11]</b> 8/4 15/8 44/11 46/5 59/1 59/3 69/5 75/21 76/9 76/9 83/8 <b>you've [10]</b> 15/20 20/23 54/10 54/12 66/3 73/3 90/8 102/17 113/12 115/18 <b>young [1]</b> 36/18 <b>your [84]</b> 6/9 6/11 6/13 6/15 7/4 7/5 7/8 7/23 9/4 9/9 10/3 11/13 11/25 12/1 12/7 13/19 14/2 14/10 14/23 14/25 15/10 26/4 26/11 27/1 29/19 29/25 30/17 31/13 32/4 32/6 36/19 36/20 39/19 40/1 40/20 41/1 43/14 43/15 43/24 44/12 44/14 44/20 45/20 45/21 47/3 50/1 51/5 51/7 54/3 54/9 54/17 57/10 57/10 66/20 67/16 71/25 72/1 75/20 82/7 82/7 84/12 85/4 85/23 88/16 92/3 92/5 92/15 96/11	97/1 102/16 102/24 104/15 104/16 109/8 109/14 111/12 111/13 113/5 113/6 115/1 115/6 115/15 116/17 116/21 <b>Z</b> <b>zoom [1]</b> 14/9			
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CLERK OF THE COURT

**ORD**

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

vs.

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

Defendants.

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

**ORDER ON MOTION TO  
INTERVENE TO ENFORCE  
SETTLEMENT**

**ORDER ON MOTION TO INTERVENE TO ENFORCE SETTLEMENT**

Non-Party QBE Insurance Corporation's Motion to Intervene to Enforce Settlement, and  
SUNRISE VILLAS IX's Joinder thereto, having come on for hearing the 11<sup>th</sup> day of February,  
2021, the Court having considered the points and authorities on file herein, and oral argument of  
counsel, the Court rules as follows:



1 The Court notes that the pleadings and records in this matter confirm the following  
2 **FINDINGS OF FACT:**

3 RUSSO filed the Complaint in this matter on April 6, 2017.

4 The Court GRANTED RUSSO's Motion to Amended the Complaint in this matter to add  
5 claims against Defendants RICHARD DUSLAK ("DUSLAK") and JUSTIN SESMAN  
6 ("SESMAN") on February 7, 2018.

7 RUSSO served the Amended Complaint on Defendant SESMAN on February 13, 2018.

8 RUSSO served the Amended Complaint on Defendant DUSLAK on February 14, 2018.

9 Neither DUSLAK nor SESMAN made any appearance in the instant litigation.

10 The Court Clerk entered a Default against Defendant DUSLAK on September 4, 2019.

11 The Court Clerk entered a Default against Defendant SESMAN on September 13, 2019.

12 Trial commenced in this matter on September 9, 2019, which trial resulted in a mistrial.  
13 There is no record of any motion to intervene being filed before the September 9, 2019 trial.  
14 Trial again commenced on October 10, 2019. There is no record of any motion to intervene  
15 being filed before the October 10, 2019 trial commenced.

16 The October 10, 2019 trial concluded on October 18, 2019 when the parties advised the  
17 Court that a settlement had been reached as to certain parties. The trial transcript from October  
18 18, 2019 confirms that the active parties in this matter advised the Court on that date that a  
19 settlement had been reached as to the active parties in this matter. The October 18, 2019  
20 transcript further confirms the settling parties agreed that "there are two other parties in this case  
21 who have been defaulted [DUSLAK and SESMAN]" and that "this settlement does not affect  
22 them." See, October 18, 2019 transcript at P. 6 L. 16-21. The October 18, 2019 transcript  
23 further confirms that the settling parties agreed the settlement only involved the parties that had  
24

1 “actively litigated and PW JAMES”. *See* October 18, 2019 transcript at P. 8 L. 2-3. The  
2 October 18, 2019 transcript also confirms the settling parties agreed that “nothing in any of  
3 these releases or settlement . . . affects any rights Dr. Russo may have against any person or  
4 entity related to the claims of the two individuals who have been defaulted [DUSLAK and  
5 SESMAN]”. *See*, October 18, 2019 transcript at p. 11 L. 3-9. There is no record of any motion  
6 to intervene being filed before the October 10, 2019 trial concluded on October 18, 2019.  
7

8       RUSSO filed an Application for Judgment by Default on October 31, 2019 which  
9 Application noted that defaults had previously been entered against Defendants DUSLAK and  
10 SESMAN, and which Application sought Judgment against DUSLAK and SESMAN in the  
11 amount of \$25,000,000.00. The Application for Judgment by Default was served on all parties  
12 in this matter on October 31, 2019.  
13

14       On October 31, 2019 Joshua Raak, the Deputy Clerk of the Court, sent Notice of Hearing  
15 to all active parties to this matter, including SUNRISE, which notified the said parties that  
16 RUSSO’s Application for Judgment by Default would be heard by the Court on December 17,  
17 2019.  
18

19       There is no record of any of the parties filing any opposition(s) to RUSSO’s Application  
20 for Judgement by Default.  
21

22       None of the Defendants in this matter appeared at the December 17, 2019 hearing on  
23 RUSSO’s Application for Judgment by Default, nor did any of the Defendants, or any other  
24 parties or non-parties, contest RUSSO’s Application for Judgment by Default.

25       Following the Hearing on RUSSO’s Application for Judgment by Default, the Court  
26 entered Judgment in favor of RUSSO and against DUSLAK and SESMAN as individuals in the  
27  
28

1 amount of \$25,000,000.00 with interest accruing from the date of entry until paid in full. Notice  
2 of Entry of the said Judgment was served on all parties to this matter on December 17, 2019.

3  
4 There is no record of any motion being filed under NRCP 59 to alter or amend the  
5 Judgment within 28 days after service of written notice of entry of the said Judgment. Indeed,  
6 there is no record of any such motion being filed at any time in 2019 or in 2020.

7  
8 There is no record of any motion being filed under NRCP 60 for relief from the final  
9 Judgment in this matter within six months after the date of the proceeding or after the date of  
10 service of the written notice of entry of the duly entered December 17, 2019 Judgment. Indeed,  
11 there is no record of any such motion being filed at any time in 2019 or in 2020.

12  
13 With a final Judgment having been duly entered in this matter on December 17, 2019, and  
14 no request to set aside the same under NRCP 59, nor any request for relief under NRCP 60  
15 being filed, the Court statistically closed this case on May 14, 2020.

16  
17 Non-party QBE filed the instant Motion to Intervene to Enforce Settlement on January 4,  
18 2021. SUNRISE filed a Joinder to the said Motion on January 7, 2021. SUNRISE subsequently  
19 filed a Motion to set aside the Judgment. During the February 11, 2021 hearing on this matter  
20 counsel for non-party QBE stated, “we join in the request to set aside the judgment”. *See*, P. 11  
21 L. 7-8. Non-party QBE also described its motion to intervene to enforce settlement as an  
22 “indirect attack on that judgment” as well. *Id* at P. 47 L. 14-16.

23 The Court makes the following **CONCLUSIONS OF LAW**:

24  
25 NRS 12.130 states, “*before the trial* any person may intervene in an action or proceeding,  
26 who has an interest in the matter in litigation, in the success of either of the parties, or an interest  
27 against both.” (Emphasis added). Trial commenced in this matter on September 9, 2019, and  
28 again on October 10, 2019, with the October 10, 2019 trial concluding with the parties placing

1 the settlement as to the active parties in this matter on the record on October 18, 2019. There is  
2 no record of any motion to intervene ever being filed in this matter “before trial” as required by  
3 NRS 12.130.

4  
5 Additionally, the Nevada Supreme Court has held, “The plain language of NRS 12.130  
6 does not permit intervention subsequent to the entry of a final judgment.” *Lopez v. Merit*  
7 *Insurance Co.*, 853 P.2d 1266, 1268 (1993). The Nevada Supreme Court has long held that  
8 intervention cannot be had after a final judgment has been entered. *See, Ryan v. Landis*, 58  
9 Nev. 253, 75 P.2d 734. (1938). In *Ryan* the Court adopted the holding from a California  
10 decision a decade before which held that “in all cases [intervention] must be made before trial.”  
11 *Id* (citing *Kelly v. Smith* 204 Cal. 496, 268 P. 1057 (1928)). The Nevada Supreme Court  
12 subsequently held that, “In refusing to allow intervention subsequent to the entry of a final  
13 judgment, this court has not distinguished between judgments entered following trial and  
14 judgments entered by default or by agreement of the parties.” *Lopez v. Merit Insurance Co.*,  
15 853 P.2d 1266, 1268 (1993). In *Lopez* the Court reiterated that “[i]n all cases” intervention must  
16 be sought before judgment is entered. *Id*.

17  
18 A recent case in which the Nevada Supreme Court again held that intervention cannot be  
19 permitted after judgment has been entered is *Nalder v. Eighth Judicial Dist. Ct.*, 136  
20 Nev.Adv.Op. 24 (2020). The *Nalder* Court explained:

21  
22 NRS 12.130 provides that “[b]efore the trial, any person may intervene in an action or  
23 proceeding, who has an interest in the matter in litigation, in the success of either of  
24 the parties, or an interest against both.” In *Ryan v. Landis*, in interpreting a nearly  
25 identical predecessor to NRS 12.130, we adopted the principle that there could be no  
26 intervention after judgment, including default judgments and judgments rendered by  
27 agreement of the parties. 58 Nev. 253, 259, 75 P.2d 734, 735 (1938). We reaffirmed  
28 that principle in *Lopez v. Merit Insurance Co.*, 109 Nev. at 556-57, 853 P.2d at 1268.  
In reversing a lower court's decision allowing an insurance company to intervene  
after judgment, we reasoned, “[t]he plain language of NRS 12.130 does not permit  
intervention subsequent to entry of a final judgment.” *Id*. at 556, 853 P.2d at 1268.

1 We do not intend today to disturb that well-settled principle that intervention may not  
2 follow a final judgment, nor do we intend to undermine the finality and the preclusive  
3 effect of final judgments.

4 *Id* at P. 6-7.

5 During the hearing on this matter non-party QBE advised the Court that in seeking to  
6 intervene, “we join in the request to set aside the judgment”. *See* Transcript from February 11,  
7 2021 hearing at P. 11 L. 7-8. Non-party QBE further advised the Court that it’s motion to  
8 intervene to enforce settlement sought to pursue an “indirect attack on that judgment” as well.  
9 *Id* at P. 47 L. 14-16. The Court in *Nalder* held that “if [an insurance carrier] wanted to  
10 challenge the validity of a judgment, it could have timely intervened before judgment to become  
11 a proper party to the litigation to challenge it under NRCP 60.” *Id* at P. 7 (footnote 4). The  
12 *Nalder* Court made it clear when it held, “Nothing permits [an insurance carrier] to intervene  
13 after judgment to challenge the validity of the judgment itself.” *Id* at P. 7. As *Nalder* does not  
14 permit a direct attack on a judgment when intervention is sought after judgment has been  
15 entered, the Court in the instant matter does not believe the Supreme Court would permit an  
16 indirect attack on a judgment when intervention is sought after judgment has been entered.  
17

18 Non-party QBE’s motion also sought leave to intervene under NRCP 24. The *Nalder*  
19 Court, in recognizing that NRS 12.130 requires that intervention be made before Judgment is  
20 entered in a matter, also held that NRCP 24 must be read in harmony with NRS 12.130. *Id* at P.  
21 10, citing *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860 P;2d 720, 723 (1993) (“Whenever  
22 possible, this court will interpret a rule or statute in harmony with other rules and statutes.”).  
23 The requirement under NRCP 24 that a motion to intervene be “timely” must be read in  
24 harmony with NRS 12.130 which requires that a motion to intervene be filed “before trial” and  
25 before judgment is entered.  
26  
27  
28

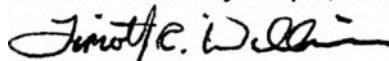
1 Trial commenced in the instant matter on September 9, 2019, which trial resulted in a  
2 mistrial. Trial again commenced on October 10, 2019, which trial concluded with the active  
3 parties advising the Court that a settlement had been reached as to the active parties in this  
4 matter, which settlement did not include DUSLAK or SESMAN, and with the active parties  
5 further advising the Court on October 18, 2019 that the said settlement would have no affect on  
6 RUSSO's rights against DUSLAK and/or SESMAN.  
7

8 The Court entered a final Judgment against Defendants DUSLAK and SESMAN on  
9 December 17, 2019. Notice of Entry of the said Judgment was served on all parties in this  
10 action on December 17, 2019. As the Court did not receive any motions under NRCP 59 to  
11 alter or amend the duly entered Judgment within 28 days of written notice of entry being served  
12 on all parties nor any motions under NRCP 60 for relief from the said Judgment within six  
13 months of written notice of entry being served on all parties, and as the Court closed this matter  
14 May 14, 2020, the finality and preclusive effect of the Judgment that was duly entered in this  
15 matter on December 17, 2019 is well established. Non-party QBE's January 4, 2021 Motion to  
16 Intervene to Enforce Settlement, and SUNRISE's January 7, 2021 Joinder thereto, were filed  
17 well over a year after trial commenced and subsequently concluded in this matter. The said  
18 Motion and Joinder were also filed well over a year after Judgment was entered in this matter  
19 and over a year after notice of entry was served on the parties in this action.  
20  
21  
22

23 In reliance on NRS 12.130, which states that intervention may occur "before trial", and  
24 in reliance on *Nalder*, wherein it was determined that it is a well-settled principle that  
25 intervention may not follow a final judgment, nor may intervention undermine the finality and  
26 preclusive effects of final Judgments, Non-party QBE's Motion to Intervene to Enforce  
27 Settlement, based on the fact that it was not filed before trial, and based on the fact that a final  
28

Judgment has been entered as to Defendants DUSLAK and/or SESMAN, shall be and hereby is  
DENIED. Additionally, Defendant SUNRISE's Joinder shall also be and hereby is DENIED for  
the same reasons.

Dated this 22nd day of April, 2021



DISTRICT COURT JUDGE

Submitted by:

LAW OFFICE OF DAVID SAMPSON, LLC

**619 EAB 0C8F F7BB**  
**Timothy C. Williams**  
**District Court Judge**

ZJ

BY: /s/ *David Sampson*

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3<sup>rd</sup> St.

Las Vegas NV 89101

Attorney for Plaintiff

**Amanda Nalder**

---

**From:** David Sampson <davidsampsonlaw@gmail.com>  
**Sent:** Monday, April 5, 2021 9:01 AM  
**To:** William Reeves; Leonard Fink; Shannon Splaine; Amanda Nalder  
**Subject:** Russo  
**Attachments:** 649. Order on Motion to Intervene.pdf

Attached is a copy of the proposed Order I will be submitting to the Court in this matter. I appreciate Ms. Splaine's prior comment and have amended the factual findings to reflect that the Court Clerk served the notice of hearing on the active parties.

I added verbiage reflecting that NRS 12.130 allows intervention "before trial", and included factual findings regarding the fact that no intervention was sought before either trial in this matter, nor was leave to intervene sought before trial concluded in this matter on October 18, 2019. I have also added details surrounding how the October trial concluded with a settlement among the active parties to the litigation and that entry of Judgment against the defaulted parties was procured thereafter.

Having now had a chance to review the transcript from the February hearing I have added additional findings of fact and conclusions of law from the said hearing. As I have taken all of the factual findings in the proposed Order directly from the record(s) in this matter I would expect that QBE and SUNRISE would agree that the factual findings set forth in the proposed Order accurately reflect the facts as they occurred. That being said, as Mr. Fink has advised he is out of the office, and as Mr. Reeves has not responded to my prior communications other than to request a word version and to label my behavior "odd", I suspect I will not hear back from either of them regarding any confirmation that the factual findings are indeed accurate. I have therefore removed any reference to QBE and/or SUNRISE agreeing to the same. Instead, the proposed Order reflects that the record(s) in this matter confirm the facts set forth therein.

Thank you,

--

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

# The Law Office of David Sampson, LLC.

630 S. 3rd St.  
 Las Vegas NV 89101  
 Phone: (702) 605-1099  
 Fax: (888) 209-4199

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Thank you.

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Simone Russo, Plaintiff(s)

CASE NO: A-17-753606-C

7 vs.

DEPT. NO. Department 16

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

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order was served via the court's electronic eFile system to all  
14 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 4/22/2021

15 Michael Merritt michael.merritt@mccormickbarstow.com

16 Staci Ibarra sibarra@lgclawoffice.com

17 Tricia Dorner tricia.dorner@mccormickbarstow.com

18 "David Sampson, Esq. " . davidsampsonlaw@gmail.com

19 Amanda Nalder . amanda@davidsampsonlaw.com

20 Chris Turtzo . turtzo@morrisullivanlaw.com

21 Kristin Thomas . kristin.thomas@mccormickbarstow.com

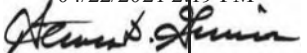
22 Michael R Merritt . Michael.Merritt@mccormickbarstow.com

23 Shannon Splaine ssplaine@lgclawoffice.com

24 Barbara Pederson bpederson@lgclawoffice.com

25 David Clark dclark@lipsonneilson.com

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2	Debra Marquez	dmarquez@lipsonneilson.com
3	Jonathan Pattillo	JPattillo@springelfink.com
4	Ramiro Morales	rmorales@mfrlegal.com
5	Philip John	philip.john@mccormickbarstow.com
6	Laura Lybarger	laura.lybarger@mccormickbarstow.com
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8	William Reeves	wreeves@mfrlegal.com
9	Mail Room	espringel@springelfink.com
10	Thomas Levine	tlevine@springelfink.com
11	Jennifer Arledge	jarledge@sgroandroger.com
12	E File	efile@sgroandroger.com
13	Amanda Nalder	phoeny27@gmail.com
14	David Sampson	davidsampsonlaw@gmail.com
15	Tacota Scharp	tscharp@sgroandroger.com
16		
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CLERK OF THE COURT

**ORD**

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

vs.

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

Defendants.

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

**ORDER ON MOTION TO  
SUBSTITUTE**

**ORDER ON MOTION TO SUBSTITUTE**

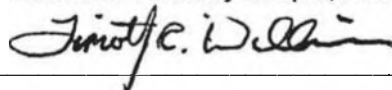
Plaintiff's motion to substitute, having come on for hearing the 6<sup>th</sup> day of April, 2021, the parties appearing by and through their counsel of record, the Court having reviewed the papers submitted, having heard oral argument, and good cause appearing, the Court rules as follows:

1 The Court finds that Defendant SCARCELLI filed a suggestion of death on February 4,  
2 2021. The Court further finds that Plaintiff RUSSO met his burden under NRCP 25 to file a  
3 motion for substitution, which RUSSO filed on March 4, 2021, which was well within 180 days  
4 of the suggestion of death being filed.  
5

6 The Court DENIES RUSSO's motion to substitute SCARCELLI's counsel in the place  
7 and stead of SCARCELLI, but GRANTS RUSSO's motion to substitute and has invited  
8 RUSSO to suggest an appropriate individual to be substituted in the place and stead of  
9 SCARCELLI.  
10

11 The Court hereby appoints TAMARA HARLESS to serve as the representative of  
12 SCARCELLI in this matter.  
13

14 Dated this 22nd day of April, 2021

15   
16

17 229 757 475E BC1B  
18 Timothy C. Williams  
19 District Court Judge

ZJ

20 Submitted by:  
21 LAW OFFICE OF DAVID SAMPSON, LLC.  
22

23 BY: /s/ David Sampson  
24

25 DAVID SAMPSON, ESQ.  
26 Nevada Bar No.6811  
27 LAW OFFICE OF DAVID SAMPSON, LLC.  
28 630 S. 3<sup>rd</sup> St.  
Las Vegas NV 89101  
Attorney for Plaintiff



Amanda Nalder &lt;phoeny27@gmail.com&gt;

---

**Russo**

1 message

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

Wed, Apr 14, 2021 at 10:00 AM

To: David Clark &lt;dclark@lipsonneilson.com&gt;, Amanda Nalder &lt;amanda@davidsampsonlaw.com&gt;

Attached is the Order on Russo's motion to substitute that we will be submitting to the Court.

Thank you,

--

**David Sampson, Esq.**

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

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

## The Law Office of David Sampson, LLC.

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Thank you.



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**651. Order on Motion to Substitute.pdf**

83K

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Simone Russo, Plaintiff(s)

CASE NO: A-17-753606-C

7 vs.

DEPT. NO. Department 16

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

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/22/2021

15 Michael Merritt

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18 "David Sampson, Esq. " .

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ssplaine@lgclawoffice.com

24 Barbara Pederson

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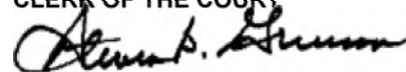
25 David Clark

dclark@lipsonneilson.com

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2	Debra Marquez	dmarquez@lipsonneilson.com
3	Jonathan Pattillo	JPattillo@springelfink.com
4	Ramiro Morales	rmorales@mfrlegal.com
5	Philip John	philip.john@mccormickbarstow.com
6	Laura Lybarger	laura.lybarger@mccormickbarstow.com
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11	Jennifer Arledge	jarledge@sgroandroger.com
12	E File	efile@sgroandroger.com
13	Amanda Nalder	phoeny27@gmail.com
14	David Sampson	davidsampsonlaw@gmail.com
15	Tacota Scharp	tscharp@sgroandroger.com
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4/22/2021 3:56 PM  
Steven D. Grierson  
CLERK OF THE COURT



**NOE**

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

Defendants. )

**NOTICE OF ENTRY**

TO: All Defendants  
TO: Counsel for Defendants

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order Motion to Intervene to Enforce Settlement was entered in the above entitled matter on the 22<sup>nd</sup> day of April, 2021.

///

///

a copy of which is attached hereto.

DATED THIS 22<sup>nd</sup> day of April, 2021

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ *David Sampson*

DAVID SAMPSON, ESQ.

Nevada Bar No. 6811

LAW OFFICE OF DAVID SAMPSON

630 S. 3<sup>rd</sup> Street

Las Vegas, NV 89101

Tel: 702-605-1099

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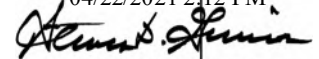
*Attorney for Plaintiff*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, and that on this 22<sup>nd</sup> day of April, 2021, I served a copy of the foregoing **NOTICE OF ENTRY** via Electronic Service through the Court's Online filing System to all parties on the eservice list.

/s/ *Amanda Nalder*  
An employee of The Law Office of David Sampson, LLC

## **EXHIBIT “1”**



CLERK OF THE COURT

**ORD**

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, )

**ORDER ON MOTION TO  
INTERVENE TO ENFORCE  
SETTLEMENT**

Defendants. )

**ORDER ON MOTION TO INTERVENE TO ENFORCE SETTLEMENT**

Non-Party QBE Insurance Corporation's Motion to Intervene to Enforce Settlement, and  
SUNRISE VILLAS IX's Joinder thereto, having come on for hearing the 11<sup>th</sup> day of February,  
2021, the Court having considered the points and authorities on file herein, and oral argument of  
counsel, the Court rules as follows:

1 The Court notes that the pleadings and records in this matter confirm the following  
2 **FINDINGS OF FACT:**

3 RUSSO filed the Complaint in this matter on April 6, 2017.

4 The Court GRANTED RUSSO's Motion to Amended the Complaint in this matter to add  
5 claims against Defendants RICHARD DUSLAK ("DUSLAK") and JUSTIN SESMAN  
6 ("SESMAN") on February 7, 2018.

7 RUSSO served the Amended Complaint on Defendant SESMAN on February 13, 2018.

8 RUSSO served the Amended Complaint on Defendant DUSLAK on February 14, 2018.

9 Neither DUSLAK nor SESMAN made any appearance in the instant litigation.

10 The Court Clerk entered a Default against Defendant DUSLAK on September 4, 2019.

11 The Court Clerk entered a Default against Defendant SESMAN on September 13, 2019.

12 Trial commenced in this matter on September 9, 2019, which trial resulted in a mistrial.  
13 There is no record of any motion to intervene being filed before the September 9, 2019 trial.  
14 Trial again commenced on October 10, 2019. There is no record of any motion to intervene  
15 being filed before the October 10, 2019 trial commenced.

16 The October 10, 2019 trial concluded on October 18, 2019 when the parties advised the  
17 Court that a settlement had been reached as to certain parties. The trial transcript from October  
18 18, 2019 confirms that the active parties in this matter advised the Court on that date that a  
19 settlement had been reached as to the active parties in this matter. The October 18, 2019  
20 transcript further confirms the settling parties agreed that "there are two other parties in this case  
21 who have been defaulted [DUSLAK and SESMAN]" and that "this settlement does not affect  
22 them." See, October 18, 2019 transcript at P. 6 L. 16-21. The October 18, 2019 transcript  
23 further confirms that the settling parties agreed the settlement only involved the parties that had  
24

1 “actively litigated and PW JAMES”. *See* October 18, 2019 transcript at P. 8 L. 2-3. The  
2 October 18, 2019 transcript also confirms the settling parties agreed that “nothing in any of  
3 these releases or settlement . . . affects any rights Dr. Russo may have against any person or  
4 entity related to the claims of the two individuals who have been defaulted [DUSLAK and  
5 SESMAN]”. *See*, October 18, 2019 transcript at p. 11 L. 3-9. There is no record of any motion  
6 to intervene being filed before the October 10, 2019 trial concluded on October 18, 2019.  
7

8       RUSSO filed an Application for Judgment by Default on October 31, 2019 which  
9 Application noted that defaults had previously been entered against Defendants DUSLAK and  
10 SESMAN, and which Application sought Judgment against DUSLAK and SESMAN in the  
11 amount of \$25,000,000.00. The Application for Judgment by Default was served on all parties  
12 in this matter on October 31, 2019.  
13

14       On October 31, 2019 Joshua Raak, the Deputy Clerk of the Court, sent Notice of Hearing  
15 to all active parties to this matter, including SUNRISE, which notified the said parties that  
16 RUSSO’s Application for Judgment by Default would be heard by the Court on December 17,  
17 2019.  
18

19       There is no record of any of the parties filing any opposition(s) to RUSSO’s Application  
20 for Judgement by Default.  
21

22       None of the Defendants in this matter appeared at the December 17, 2019 hearing on  
23 RUSSO’s Application for Judgment by Default, nor did any of the Defendants, or any other  
24 parties or non-parties, contest RUSSO’s Application for Judgment by Default.

25       Following the Hearing on RUSSO’s Application for Judgment by Default, the Court  
26 entered Judgment in favor of RUSSO and against DUSLAK and SESMAN as individuals in the  
27  
28

1 amount of \$25,000,000.00 with interest accruing from the date of entry until paid in full. Notice  
2 of Entry of the said Judgment was served on all parties to this matter on December 17, 2019.

3  
4 There is no record of any motion being filed under NRCP 59 to alter or amend the  
5 Judgment within 28 days after service of written notice of entry of the said Judgment. Indeed,  
6 there is no record of any such motion being filed at any time in 2019 or in 2020.

7  
8 There is no record of any motion being filed under NRCP 60 for relief from the final  
9 Judgment in this matter within six months after the date of the proceeding or after the date of  
10 service of the written notice of entry of the duly entered December 17, 2019 Judgment. Indeed,  
11 there is no record of any such motion being filed at any time in 2019 or in 2020.

12 With a final Judgment having been duly entered in this matter on December 17, 2019, and  
13 no request to set aside the same under NRCP 59, nor any request for relief under NRCP 60  
14 being filed, the Court statistically closed this case on May 14, 2020.

15  
16 Non-party QBE filed the instant Motion to Intervene to Enforce Settlement on January 4,  
17 2021. SUNRISE filed a Joinder to the said Motion on January 7, 2021. SUNRISE subsequently  
18 filed a Motion to set aside the Judgment. During the February 11, 2021 hearing on this matter  
19 counsel for non-party QBE stated, “we join in the request to set aside the judgment”. *See*, P. 11  
20 L. 7-8. Non-party QBE also described its motion to intervene to enforce settlement as an  
21 “indirect attack on that judgment” as well. *Id* at P. 47 L. 14-16.

22  
23 The Court makes the following **CONCLUSIONS OF LAW**:

24 NRS 12.130 states, “*before the trial* any person may intervene in an action or proceeding,  
25 who has an interest in the matter in litigation, in the success of either of the parties, or an interest  
26 against both.” (Emphasis added). Trial commenced in this matter on September 9, 2019, and  
27 again on October 10, 2019, with the October 10, 2019 trial concluding with the parties placing  
28



1 the settlement as to the active parties in this matter on the record on October 18, 2019. There is  
2 no record of any motion to intervene ever being filed in this matter “before trial” as required by  
3 NRS 12.130.

4  
5 Additionally, the Nevada Supreme Court has held, “The plain language of NRS 12.130  
6 does not permit intervention subsequent to the entry of a final judgment.” *Lopez v. Merit*  
7 *Insurance Co.*, 853 P.2d 1266, 1268 (1993). The Nevada Supreme Court has long held that  
8 intervention cannot be had after a final judgment has been entered. *See, Ryan v. Landis*, 58  
9 Nev. 253, 75 P.2d 734. (1938). In *Ryan* the Court adopted the holding from a California  
10 decision a decade before which held that “in all cases [intervention] must be made before trial.”  
11 *Id* (citing *Kelly v. Smith* 204 Cal. 496, 268 P. 1057 (1928)). The Nevada Supreme Court  
12 subsequently held that, “In refusing to allow intervention subsequent to the entry of a final  
13 judgment, this court has not distinguished between judgments entered following trial and  
14 judgments entered by default or by agreement of the parties.” *Lopez v. Merit Insurance Co.*,  
15 853 P.2d 1266, 1268 (1993). In *Lopez* the Court reiterated that “[i]n all cases” intervention must  
16 be sought before judgment is entered. *Id*.

17  
18 A recent case in which the Nevada Supreme Court again held that intervention cannot be  
19 permitted after judgment has been entered is *Nalder v. Eighth Judicial Dist. Ct.*, 136  
20 Nev.Adv.Op. 24 (2020). The *Nalder* Court explained:

21  
22 NRS 12.130 provides that “[b]efore the trial, any person may intervene in an action or  
23 proceeding, who has an interest in the matter in litigation, in the success of either of  
24 the parties, or an interest against both.” In *Ryan v. Landis*, in interpreting a nearly  
25 identical predecessor to NRS 12.130, we adopted the principle that there could be no  
26 intervention after judgment, including default judgments and judgments rendered by  
27 agreement of the parties. 58 Nev. 253, 259, 75 P.2d 734, 735 (1938). We reaffirmed  
28 that principle in *Lopez v. Merit Insurance Co.*, 109 Nev. at 556-57, 853 P.2d at 1268.  
In reversing a lower court's decision allowing an insurance company to intervene  
after judgment, we reasoned, “[t]he plain language of NRS 12.130 does not permit  
intervention subsequent to entry of a final judgment.” *Id*. at 556, 853 P.2d at 1268.

1 We do not intend today to disturb that well-settled principle that intervention may not  
2 follow a final judgment, nor do we intend to undermine the finality and the preclusive  
3 effect of final judgments.

4 *Id* at P. 6-7.

5 During the hearing on this matter non-party QBE advised the Court that in seeking to  
6 intervene, “we join in the request to set aside the judgment”. *See* Transcript from February 11,  
7 2021 hearing at P. 11 L. 7-8. Non-party QBE further advised the Court that it’s motion to  
8 intervene to enforce settlement sought to pursue an “indirect attack on that judgment” as well.  
9 *Id* at P. 47 L. 14-16. The Court in *Nalder* held that “if [an insurance carrier] wanted to  
10 challenge the validity of a judgment, it could have timely intervened before judgment to become  
11 a proper party to the litigation to challenge it under NRCP 60.” *Id* at P. 7 (footnote 4). The  
12 *Nalder* Court made it clear when it held, “Nothing permits [an insurance carrier] to intervene  
13 after judgment to challenge the validity of the judgment itself.” *Id* at P. 7. As *Nalder* does not  
14 permit a direct attack on a judgment when intervention is sought after judgment has been  
15 entered, the Court in the instant matter does not believe the Supreme Court would permit an  
16 indirect attack on a judgment when intervention is sought after judgment has been entered.  
17

18 Non-party QBE’s motion also sought leave to intervene under NRCP 24. The *Nalder*  
19 Court, in recognizing that NRS 12.130 requires that intervention be made before Judgment is  
20 entered in a matter, also held that NRCP 24 must be read in harmony with NRS 12.130. *Id* at P.  
21 10, citing *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860 P;2d 720, 723 (1993) (“Whenever  
22 possible, this court will interpret a rule or statute in harmony with other rules and statutes.”).  
23 The requirement under NRCP 24 that a motion to intervene be “timely” must be read in  
24 harmony with NRS 12.130 which requires that a motion to intervene be filed “before trial” and  
25 before judgment is entered.  
26  
27  
28

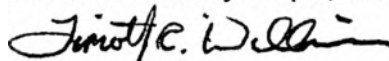
1 Trial commenced in the instant matter on September 9, 2019, which trial resulted in a  
2 mistrial. Trial again commenced on October 10, 2019, which trial concluded with the active  
3 parties advising the Court that a settlement had been reached as to the active parties in this  
4 matter, which settlement did not include DUSLAK or SESMAN, and with the active parties  
5 further advising the Court on October 18, 2019 that the said settlement would have no affect on  
6 RUSSO's rights against DUSLAK and/or SESMAN.  
7

8 The Court entered a final Judgment against Defendants DUSLAK and SESMAN on  
9 December 17, 2019. Notice of Entry of the said Judgment was served on all parties in this  
10 action on December 17, 2019. As the Court did not receive any motions under NRCP 59 to  
11 alter or amend the duly entered Judgment within 28 days of written notice of entry being served  
12 on all parties nor any motions under NRCP 60 for relief from the said Judgment within six  
13 months of written notice of entry being served on all parties, and as the Court closed this matter  
14 May 14, 2020, the finality and preclusive effect of the Judgment that was duly entered in this  
15 matter on December 17, 2019 is well established. Non-party QBE's January 4, 2021 Motion to  
16 Intervene to Enforce Settlement, and SUNRISE's January 7, 2021 Joinder thereto, were filed  
17 well over a year after trial commenced and subsequently concluded in this matter. The said  
18 Motion and Joinder were also filed well over a year after Judgment was entered in this matter  
19 and over a year after notice of entry was served on the parties in this action.  
20  
21  
22

23 In reliance on NRS 12.130, which states that intervention may occur "before trial", and  
24 in reliance on *Nalder*, wherein it was determined that it is a well-settled principle that  
25 intervention may not follow a final judgment, nor may intervention undermine the finality and  
26 preclusive effects of final Judgments, Non-party QBE's Motion to Intervene to Enforce  
27 Settlement, based on the fact that it was not filed before trial, and based on the fact that a final  
28

1 Judgment has been entered as to Defendants DUSLAK and/or SESMAN, shall be and hereby is  
2 DENIED. Additionally, Defendant SUNRISE's Joinder shall also be and hereby is DENIED for  
3 the same reasons.  
4

5 Dated this 22nd day of April, 2021

6 

7 DISTRICT COURT JUDGE

8 Submitted by:

9 LAW OFFICE OF DAVID SAMPSON, LLC

619 EAB 0C8F F7BB  
Timothy C. Williams  
District Court Judge

ZJ

10 BY: /s/ David Sampson

11 DAVID SAMPSON, ESQ.

12 Nevada Bar No.6811

13 LAW OFFICE OF DAVID SAMPSON, LLC.

14 630 S. 3<sup>rd</sup> St.

15 Las Vegas NV 89101

16 Attorney for Plaintiff  
17  
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27  
28

**Amanda Nalder**

---

**From:** David Sampson <davidsampsonlaw@gmail.com>  
**Sent:** Monday, April 5, 2021 9:01 AM  
**To:** William Reeves; Leonard Fink; Shannon Splaine; Amanda Nalder  
**Subject:** Russo  
**Attachments:** 649. Order on Motion to Intervene.pdf

Attached is a copy of the proposed Order I will be submitting to the Court in this matter. I appreciate Ms. Splaine's prior comment and have amended the factual findings to reflect that the Court Clerk served the notice of hearing on the active parties.

I added verbiage reflecting that NRS 12.130 allows intervention "before trial", and included factual findings regarding the fact that no intervention was sought before either trial in this matter, nor was leave to intervene sought before trial concluded in this matter on October 18, 2019. I have also added details surrounding how the October trial concluded with a settlement among the active parties to the litigation and that entry of Judgment against the defaulted parties was procured thereafter.

Having now had a chance to review the transcript from the February hearing I have added additional findings of fact and conclusions of law from the said hearing. As I have taken all of the factual findings in the proposed Order directly from the record(s) in this matter I would expect that QBE and SUNRISE would agree that the factual findings set forth in the proposed Order accurately reflect the facts as they occurred. That being said, as Mr. Fink has advised he is out of the office, and as Mr. Reeves has not responded to my prior communications other than to request a word version and to label my behavior "odd", I suspect I will not hear back from either of them regarding any confirmation that the factual findings are indeed accurate. I have therefore removed any reference to QBE and/or SUNRISE agreeing to the same. Instead, the proposed Order reflects that the record(s) in this matter confirm the facts set forth therein.

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.  
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 Phone: (702) 605-1099  
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Thank you.

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Simone Russo, Plaintiff(s)

CASE NO: A-17-753606-C

7 vs.

DEPT. NO. Department 16

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

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order was served via the court's electronic eFile system to all  
14 recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 4/22/2021

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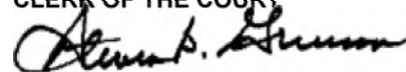
26 David Clark

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Steven D. Grierson  
CLERK OF THE COURT



**NOE**

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

Defendants. )

**NOTICE OF ENTRY**

TO: All Defendants  
TO: Counsel for Defendants

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order on Motion  
to Substitute was entered in the above entitled matter on the 22<sup>nd</sup> day of April, 2021.

///

///

a copy of which is attached hereto.

DATED THIS 22<sup>nd</sup> day of April, 2021

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ *David Sampson*

DAVID SAMPSON, ESQ.

Nevada Bar No. 6811

LAW OFFICE OF DAVID SAMPSON

630 S. 3<sup>rd</sup> Street

Las Vegas, NV 89101

Tel: 702-605-1099

Fax: 888-209-4199

Email: david@davidsampsonlaw.com

*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, and that on this 22<sup>nd</sup> day of April, 2021, I served a copy of the foregoing **NOTICE OF ENTRY** via Electronic Service through the Court's Online filing System to all parties on the eservice list.

/s/ *Amanda Nalder*  
An employee of The Law Office of David Sampson, LLC

## **EXHIBIT “1”**

**ORD**

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.	)	CASE NO: A-17-753606-C
	)	DEPT. NO: XVI
COX COMMUNICATIONS LAS VEGAS,	)	
INC., D/B/A COX COMMUNICATIONS,	)	
IES RESIDENTIAL, INC., SUNRISE	)	<b>ORDER ON MOTION TO</b>
VILLAS IX HOMEOWNERS	)	<b>SUBSTITUTE</b>
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.	)	
	)	

**ORDER ON MOTION TO SUBSTITUTE**

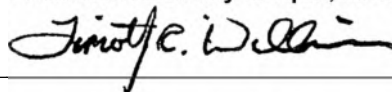
Plaintiff's motion to substitute, having come on for hearing the 6<sup>th</sup> day of April, 2021, the parties appearing by and through their counsel of record, the Court having reviewed the papers submitted, having heard oral argument, and good cause appearing, the Court rules as follows:

The Court finds that Defendant SCARCELLI filed a suggestion of death on February 4, 2021. The Court further finds that Plaintiff RUSSO met his burden under NRCP 25 to file a motion for substitution, which RUSSO filed on March 4, 2021, which was well within 180 days of the suggestion of death being filed.

The Court DENIES RUSSO's motion to substitute SCARCELLI's counsel in the place and stead of SCARCELLI, but GRANTS RUSSO's motion to substitute and has invited RUSSO to suggest an appropriate individual to be substituted in the place and stead of SCARCELLI.

The Court hereby appoints TAMARA HARLESS to serve as the representative of SCARCELLI in this matter.

Dated this 22nd day of April, 2021



229 757 475E BC1B  
Timothy C. Williams  
District Court Judge

ZJ

Submitted by:  
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. 3<sup>rd</sup> St.  
Las Vegas NV 89101  
Attorney for Plaintiff



Amanda Nalder &lt;phoeny27@gmail.com&gt;

---

**Russo**

1 message

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

Wed, Apr 14, 2021 at 10:00 AM

To: David Clark &lt;dclark@lipsonneilson.com&gt;, Amanda Nalder &lt;amanda@davidsampsonlaw.com&gt;

Attached is the Order on Russo's motion to substitute that we will be submitting to the Court.

Thank you,

--

**David Sampson, Esq.**

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

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

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

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Thank you.

Virus-free. [www.avast.com](http://www.avast.com)**651. Order on Motion to Substitute.pdf**

83K

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Simone Russo, Plaintiff(s)

CASE NO: A-17-753606-C

7 vs.

DEPT. NO. Department 16

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

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/22/2021

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A-17-753606-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**May 03, 2021**

A-17-753606-C

Simone Russo, Plaintiff(s)

vs.

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

**May 03, 2021**

**8:00 AM**

**Minute Order: Pending Motions**

**HEARD BY:** Williams, Timothy C.

**COURTROOM:** Chambers

**COURT CLERK:** Christopher Darling

**JOURNAL ENTRIES**

- After review and consideration of the points and authorities on file herein, and the argument of counsel, the Court determined as follows:

First, the Court shall address Defendant's Motion to Set Aside and/or Amend Judgment. In the instant action, a Default Judgment was entered against Defendants Duslak and Sesman on December 17, 2019, and a Certificate of Service was filed on the same day. In light of the procedural history, it was clearly set forth on the record that the settlement was between the active parties to the case and not defaulted Defendants Duslak and/or Sesman. Plaintiff Russo reserved its rights on the record to continue to pursue claims as to defaulted Defendants Duslak and/or Sesman. Moreover, as to Defendant Sunrise, the Release specifically excluded Duslak and/or Sesman, and does not exclude employees of Defendant Sunrise as done with other co-defendants. In light of the procedural history of the case, the Court has determined that there

PRINT DATE: 05/03/2021

Page 1 of 2

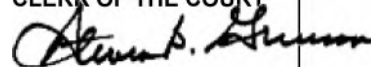
Minutes Date: May 03, 2021

**A-17-753606-C**

are no grounds to amend or set aside the Judgment pursuant to NRCP 60(a). Further, Defendant Sunrise failed to establish grounds pursuant to NRCP 60(b) (1)-(6) to amend or set aside the Default Judgment in this matter. Based on the foregoing, Defendant Sunrise Villa IX Homeowners Association's Motion to Set Aside and/or Amend Judgment shall be DENIED. Lastly, based on the record, Plaintiff Russo's Motion to Enforce Settlement shall be GRANTED.

Counsel for Plaintiff Russo shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

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.



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

Attorneys for Intervenor  
QBE Insurance Corporation

DISTRICT COURT  
CLARK COUNTY, NEVADA

SIMONE RUSSO,	)	Case No.: A753606
	)	Dept: XVI
Plaintiff,	)	
	)	MOTION TO AMEND AND/OR MODIFY
vs.	)	ORDER
	)	
COX COMMUNICATIONS LAS VEGAS,	)	<b>ORAL ARGUMENT REQUESTED</b>
INC., et al.	)	<b>HEARING REQUESTED</b>
	)	
Defendants.	)	

Notice

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

Intervenor QBE Insurance Corporation ("QBE"), pursuant to to NRCP 52 and 60, hereby moves this Court to amend and/or modify the Order it issued on April 22, 2021 in connection with QBE's Motion to Intervene to Enforce Settlement ("Motion").

As discussed herein, the Order this Court entered, prepared by counsel for the Plaintiff, includes extraneous findings not reached by this Court in connection with its adjudication of the Motion. While QBE objected to the extraneous findings and circulated a redlined version with changes, this Court was unaware of any dispute as it appears it was instead presented with the draft Order by counsel for the Plaintiff without disclosure of the dispute.

Compounding matters, counsel for Plaintiff failed to advise the other parties that the Order had been submitted to this Court. Given these circumstances, it appears that this Court was misled into believing that a consensus had been reached regarding the content of the Order while the other

1 parties were unaware that the draft Order had been submitted to this Court for review and  
2 consideration.<sup>1</sup>

3 As discussed herein, the draft Order presented to this Court includes extraneous findings  
4 unrelated to the Motion that are hotly disputed. An alternate version of the Order that more  
5 accurately memorializes this Court's ruling is submitted herewith.

6 Accordingly, request is made that this Court modify the Order issued in this case in  
7 connection with the Motion and enter the version furthered by QBE and Sunrise HOA.

8 This motion is made pursuant to NRCP 52 and 60, and is based on this Notice, the  
9 accompanying Memorandum, any other papers filed with this Court and this Court's file. Oral  
10 argument is requested.

11 Dated: May 7, 2021

MORALES FIERRO & REEVES

12  
13  
14 By: /s/ William C. Reeves  
15 William C. Reeves  
16 600 S. Tonopah Dr., Suite 300  
Las Vegas, NV 89106  
Attorneys for QBE

17 Memorandum

18 I. Background Facts

19 This matter arises from an alleged slip and fall for which a settlement was reached between  
20 Plaintiff and Sunrise HOA. QBE, the insurer for Sunrise HOA, provided it a defense in the case  
21 and funded the settlement reached on its behalf.

22 Per the terms of the settlement, Plaintiff stipulated as follows:

23 **IT IS HEREBY STIPULATED THAT FOR THE PURPOSES**  
24 **OF THIS LITIGATION AND FOR ANY AND ALL ISSUES**  
25 **RELATED TO SIMONE RUSSO'S CLAIMS AND**  
26 **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**

27  
28 <sup>1</sup> This is not the first instance tat counsel for the Plaintiff failed to properly meet and confer in an effort to gain a  
strategic advantage, which is unfortunate.

**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.**

Following the settlement, Plaintiff applied for a default judgment against Duslak and Sesman which resulted in a default judgment in excess of \$25,000,000. No record exists as to the basis for the judgment entered confirming whether Plaintiff limited his claims to Duslak and Sesman in their capacity as independent contractors as agreed to per the settlement.

In contravention of the settlement, Plaintiff has now taken the position that the judgment is entered against Duslak and Sesman in all capacities and not simply as independent contractors as agreed to via the settlement. By virtue of this position, Duslak and Sesman each contend that they face liability for conduct unrelated to the work each performed as independent contractors.<sup>2</sup>

As an intended third party beneficiary of the settlement, QBE sought to intervene to enforce Plaintiff's explicit agreement to limit his claims to Duslak and Sesman in their capacity as independent contractors. In denying the motion based on procedural considerations only, this Court issued Minutes that explain its ruling as follows:

... [I]t is a well-settled principle that intervention may not follow a final judgment, nor may intervention undermine the finality and preclusive effects of final judgments. Accordingly, Non-party QBE Insurance Corporation's Motion to Intervene to Enforce Settlement, based on the fact that a final judgment has been entered as to Defendant Richard Duslak and/or Justine Sesman, shall be DENIED.

Exhibit A.

In so doing and as is customary, the Court ordered the parties to meet and confer regarding a written order memorializing the ruling. Exhibit A. Counsel for the Plaintiff, however, largely ignored this Court's mandate, despite a prior warning to do so given that counsel previously surreptitiously circulated an order with this Court.

In circulating a draft version of the Order, counsel refused requests made on April 1 and

<sup>2</sup> Each contends that they did not act as independent contractors such that questions whether either face liability that was not otherwise released.

1 April 5 to provide a version in Word to permit for redlined changes. See Exhibits B, C. Of  
 2 significance, the April 5 email sent at 9:11 a.m. PDT explicitly states "[w]e have suggested  
 3 changes." Exhibit C.

4 Given that counsel for the Plaintiff refused to provide a Word version of the draft Order,  
 5 steps were undertaken to create a Word version that counsel for QBE proceeded to redline with  
 6 suggested changes. See Exhibit D. This Order was provided to counsel for Plaintiff on April 5,  
 7 2021 at 4:31 p.m. Id.

8 After Attorney Fink (counsel for Sunrise HOA) advised on April 7, 2021 that he approved  
 9 of the redlined version of the Order, subsequent emails were sent on April 13, 16 and 21 to counsel  
 10 for the Plaintiff inquiring as to the suggested changes without a response. Exhibit E.<sup>3</sup> Sensing  
 11 something was wrong, counsel for QBE sent the following on April 21, 2021:

12 Unless I am mistaken, an issue previously arose in this case with you  
 13 surreptitiously providing the Court with a draft order without advising  
 counsel.

14 Please confirm this has not again occurred as we have held on  
 15 forwarding a draft order to the Court given that we are waiting for you  
 to respond to our efforts to meet and confer.

16 Exhibit E.

17 Counsel for Plaintiff responded as follows:

18 Mr. Reeves,

19 You have accused me of acting surreptitiously before. You were  
 20 wrong then, and you are wrong now.

21 Have a good day,

22 Exhibit E.

23 In response, counsel for QBE replied as follows:

24 Thanks for finally responding. Good to hear that you did not act  
 25 inappropriately as to this issue.

26 Please substantively respond (as I have repeatedly requested) to the  
 inquiries below regarding the attached.

27 \_\_\_\_\_  
 28 <sup>3</sup> It appears that counsel for Plaintiff submitted his version of the Order on April 5, 2021. By not responding to the  
 inquiries, counsel affirmatively sought to conceal this fact.

1 Exhibit E.

2 Counsel never substantively responded as requested. Instead, on April 22, 2021, the parties  
3 were served with Plaintiff's version of the Order. Exhibit F. By virtue of this exchange, relief is  
4 hereby sought.

5 Discussion

6 NRCP 52(b) provides as follows:

7 On a party's motion filed no later than 28 days after service of written  
8 notice of entry of judgment, the court may amend its findings — or  
9 make additional findings — and may amend the judgment  
accordingly.

10 Meanwhile, NRCP 60(b) provides as follows:

11 On motion and just terms, the court may relieve a party or its legal  
12 representative from a final judgment, order, or proceeding for the  
following reasons:

13 (1) mistake, inadvertence, surprise, or excusable neglect;

14 (2) newly discovered evidence that, with reasonable diligence, could  
15 not have been discovered in time to move for a new trial under Rule  
59(b);

16 (3) fraud (whether previously called intrinsic or extrinsic),  
17 misrepresentation, or misconduct by an opposing party;

18 In this case and by virtue of the factual scenario above, relief is available under each code  
19 section.

20 The draft Order provided by the Plaintiff that this Court executed includes extraneous  
21 findings that were not subject to the Motion and are not supported by the record associated with it.  
22 Compare Exhibit A with Exhibit F. Per this Court's Minutes, the Motion was denied based on the  
23 following rationale:

24 . . . [I]t is a well-settled principle that intervention may not follow a  
25 final judgment, nor may intervention undermine the finality and  
26 preclusive effects of final judgments. Accordingly, Non-party QBE  
27 Insurance Corporation's Motion to Intervene to Enforce Settlement,  
based on the fact that a final judgment has been entered as to  
Defendant Richard Duslak and/or Justine Sesman, shall be DENIED.

28 Exhibit A.



QBE's version of the Order more accurately memorializes the findings and conclusions made by this Court. See Exhibit G.

Conclusion

For the reasons set forth herein, request is made that this motion be granted and that this Court withdraw Exhibit F and execute Exhibit G.

Dated: May 7, 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

Declaration of William Reeves

I, William Reeves, declare as follows:

1. I am an attorney with Morales Fierro & Reeves, counsel for QBE.
2. The information contained herein is true and accurate.
3. Attached hereto are copies of the following documents:

Exhibit A Court Minutes dated March 31, 2021

Exhibit B Correspondence

Exhibit C Correspondence

Exhibit D Correspondence with a redlined version of the Order

Exhibit E Correspondence

Exhibit F Order filed on April 22, 2021

Exhibit G Clean version of the redlined Order (Ex. D)

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: May 7, 2021

  
 William C. Reeves

# Exhibit A

A-17-753606-C

DISTRICT COURT  
CLARK COUNTY, NEVADA

Negligence - Premises Liability

COURT MINUTES

March 31, 2021

---

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

---

March 31, 2021      8:00 AM      Minute Order

HEARD BY: Williams, Timothy C.      COURTROOM: Chambers

COURT CLERK: Christopher Darling

## JOURNAL ENTRIES

- After review and consideration of the points and authorities on file herein, and oral argument of counsel, the Court determined as follows:

In reliance on *Nalder v. Eighth Judicial District Court*, 135 Nev. Adv. Op. 24 (2020), wherein it was determined that it is a well-settled principle that intervention may not follow a final judgment, nor may intervention undermine the finality and preclusive effects of final judgments. Accordingly, Non-party QBE Insurance Corporation's Motion to Intervene to Enforce Settlement, based on the fact that a final judgment has been entered as to Defendant Richard Duslak and/or Justine Sesman, shall be **DENIED**. Additionally, Defendant Sunrise Villas IX HOA's Joinder and shall also be **DENIED**.

Counsel on behalf of Plaintiff, Simone Russo, shall prepare a Findings of Fact,

PRINT DATE: 03/31/2021

Page 1 of 2

Minutes Date: March 31, 2021

A-17-753606-C

Conclusions of Law and Order based not only on the court's minute order but the pleadings on file herein, argument of counsel, and the entire record. Lastly, counsel is to circulate the order prior to submission to the Court to adverse counsel. If the counsel can't agree on the contents, the parties are to submit competing orders.

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.

# Exhibit B

**William Reeves**

---

**From:** William Reeves <[wreeves@mfrlegal.com](mailto:wreeves@mfrlegal.com)>  
**Sent:** Thursday, April 01, 2021 1:06 PM  
**To:** David Sampson  
**Cc:** Shannon Splaine; Leonard Fink  
**Subject:** RE: Russo

Odd response. We will review and advise.

All rights remain reserved.

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

**From:** David Sampson [<mailto:davidsampsonlaw@gmail.com>]  
**Sent:** Thursday, April 01, 2021 8:50 AM  
**To:** William Reeves  
**Subject:** Re: Russo

No thank you. The Findings set forth in the PDF document are the same as the Findings set forth in the Word version. Please let me know if you disagree with any of the said Findings. Should I not hear from you I will submit the same to the Court as is.

Additionally, on February 22, 2021 our office served you with Dr. Russo's Second Set of Requests for Production. To date we have not received your client's responses. Please advise as to when the responses will be provided (with objections waived if the responses were not timely).

This is the fourth time I have sent this email to you. You have not responded to my inquiries. Your choice to ignore my communications, coupled with your behavior at the prior meet and confer, leads me to believe you are unwilling to participate in a meet and confer on this matter. I will advise the Court of the same should I not hear from you forthwith.

Thank you,

On Thu, Apr 1, 2021 at 8:46 AM William Reeves <[wreeves@mfrlegal.com](mailto:wreeves@mfrlegal.com)> wrote:

Circulate the draft in Word format.

William C. Reeves

**MORALES • FIERRO • REEVES**

2151 Salvio Street, Suite 280

Concord, CA 94520

(925) 288-1776

**From:** David Sampson [mailto:[davidsampsonlaw@gmail.com](mailto:davidsampsonlaw@gmail.com)]  
**Sent:** Thursday, April 01, 2021 8:42 AM  
**To:** William Reeves; Shannon Splaine; Leonard Fink  
**Subject:** Russo

Based on the Minute Order the Court issued yesterday, I have prepared the attached proposed Order on the matter. As the Court requested I incorporate the arguments of counsel I will wait until I receive the transcript from the hearing before finalizing the Order.

As the proposed Order indicates that parties and QBE agree to the stated Findings of Fact, please let me know if you believe any of the said findings are inaccurate.

Thank you,

--

David Sampson, Esq.

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

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

## The Law Office of David Sampson, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Phone: (702) 605-1099

Fax: (888) 209-4199

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

Thank you.

--  
David Sampson, Esq.

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

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

# The Law Office of David Sampson, LLC.

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Thank you.



# Exhibit C

**William Reeves**

---

**From:** William Reeves <wreeves@mfrlegal.com>  
**Sent:** Monday, April 05, 2021 9:11 AM  
**To:** David Sampson  
**Cc:** Leonard Fink; Shannon Splaine; Amanda Nalder  
**Subject:** RE: Russo

We have suggested changes. Please circulate in Word as requested and we will redline the suggested changes.

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

**From:** David Sampson [mailto:davidsampsonlaw@gmail.com]  
**Sent:** Monday, April 05, 2021 9:01 AM  
**To:** William Reeves; Leonard Fink; Shannon Splaine; Amanda Nalder  
**Subject:** Russo

Attached is a copy of the proposed Order I will be submitting to the Court in this matter. I appreciate Ms. Splaine's prior comment and have amended the factual findings to reflect that the Court Clerk served the notice of hearing on the active parties.

I added verbiage reflecting that NRS 12.130 allows intervention "before trial", and included factual findings regarding the fact that no intervention was sought before either trial in this matter, nor was leave to intervene sought before trial concluded in this matter on October 18, 2019. I have also added details surrounding how the October trial concluded with a settlement among the active parties to the litigation and that entry of Judgment against the defaulted parties was procured thereafter.

Having now had a chance to review the transcript from the February hearing I have added additional findings of fact and conclusions of law from the said hearing. As I have taken all of the factual findings in the proposed Order directly from the record(s) in this matter I would expect that QBE and SUNRISE would agree that the factual findings set forth in the proposed Order accurately reflect the facts as they occurred. That being said, as Mr. Fink has advised he is out of the office, and as Mr. Reeves has not responded to my prior communications other than to request a word version and to label my behavior "odd", I suspect I will not hear back from either of them regarding any confirmation that the factual findings are indeed accurate. I have therefore removed any reference to QBE and/or SUNRISE agreeing to the same. Instead, the proposed Order reflects that the record(s) in this matter confirm the facts set forth therein.

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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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 D

**William Reeves**

---

**From:** William Reeves <wreeves@mfrlegal.com>  
**Sent:** Monday, April 05, 2021 4:31 PM  
**To:** David Sampson  
**Cc:** Leonard Fink; Shannon Splaine; Amanda Nalder  
**Subject:** RE: Russo  
**Attachments:** Revised Order.docx

See attached.

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

---

**From:** William Reeves [mailto:wreeves@mfrlegal.com]  
**Sent:** Monday, April 05, 2021 9:11 AM  
**To:** David Sampson  
**Cc:** Leonard Fink; Shannon Splaine; Amanda Nalder  
**Subject:** RE: Russo

We have suggested changes. Please circulate in Word as requested and we will redline the suggested changes.

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

**From:** David Sampson [mailto:davidsampsonlaw@gmail.com]  
**Sent:** Monday, April 05, 2021 9:01 AM  
**To:** William Reeves; Leonard Fink; Shannon Splaine; Amanda Nalder  
**Subject:** Russo

Attached is a copy of the proposed Order I will be submitting to the Court in this matter. I appreciate Ms. Splaine's prior comment and have amended the factual findings to reflect that the Court Clerk served the notice of hearing on the active parties.

I added verbiage reflecting that NRS 12.130 allows intervention "before trial", and included factual findings regarding the fact that no intervention was sought before either trial in this matter, nor was leave to intervene sought before trial concluded in this matter on October 18, 2019. I have also added details surrounding how the October trial concluded with a settlement among the active parties to the litigation and that entry of Judgment against the defaulted parties was procured thereafter.

Having now had a chance to review the transcript from the February hearing I have added additional findings of fact and conclusions of law from the said hearing. As I have taken all of the factual findings in the proposed Order directly from the record(s) in this matter I would expect that QBE and SUNRISE would agree that the factual findings set forth in the proposed Order accurately reflect the facts as they occurred. That being said, as Mr. Fink has advised he is out of the office, and as Mr. Reeves has not responded to my prior communications other than to request a word version and to label my behavior "odd", I suspect I will not hear back from either of them regarding any confirmation that the factual findings are indeed accurate. I have therefore removed any reference to QBE and/or SUNRISE agreeing to the same. Instead, the proposed Order reflects that the record(s) in this matter confirm the facts set forth therein.

Thank you,

--

**David Sampson, Esq.**

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

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

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Thank you.

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

5 Attorneys for Intervenor  
 6 QBE Insurance Corporation

7  
 8 DISTRICT COURT  
 9 CLARK COUNTY, NEVADA

10 SIMONE RUSSO,	)	Case No.: A753606
	)	Dept: XVI
11 Plaintiff,	)	
	)	[PROPOSED] ORDER RE: MOTION TO
12 vs.	)	INTERVENE TO ENFORCE
	)	SETTLEMENT
13 COX COMMUNICATIONS LAS VEGAS,	)	
14 INC., et al.	)	
	)	
15 Defendants.	)	

16 ORDER ON MOTION TO INTERVENE TO ENFORCE SETTLEMENT

17 Non-Party QBE Insurance Corporation's Motion to Intervene to Enforce Settlement, and  
 18 SUNRISE VILLAS IX's Joinder thereto, having come on for hearing the 11th day of February,  
 19 2021, the Court having considered the points and authorities on file herein, and oral argument of  
 20 counsel, the Court rules as follows:

21 The Court notes that the pleadings and records in this matter confirm the following  
 22 FINDINGS OF FACT:

23 RUSSO filed the Complaint in this matter on April 6, 2017.

24 The Court GRANTED RUSSO's Motion to Amended the Complaint in this matter to add  
 25 claims against Defendants RICHARD DUSLAK ("DUSLAK") and JUSTIN SESMAN  
 26 ("SESMAN") on February 7, 2018.

27 RUSSO served the Amended Complaint on Defendant SESMAN on February 13, 2018.

28 RUSSO served the Amended Complaint on Defendant DUSLAK on February 14, 2018.

Neither DUSLAK nor SESMAN made any appearance in the instant litigation.

The Court Clerk entered a Default against Defendant DUSLAK on September 4, 2019.

The Court Clerk entered a Default against Defendant SESMAN on September 13, 2019.

~~Trial commenced in this matter on September 9, 2019, which trial resulted in a mistrial.~~

~~There is no record of any motion to intervene being filed before the September 9, 2019 trial. Trial again commenced on October 10, 2019. There is no record of any motion to intervene being filed before the October 10, 2019 trial commenced.~~

~~The October 10, 2019 trial concluded on October 18, 2019 when the parties advised the Court that a settlement had been reached as to certain parties. The trial transcript from October 18, 2019 confirms that the active parties in this matter advised the Court on that date that a settlement had been reached as to the active parties in this matter. The October 18, 2019 transcript further confirms the settling parties agreed that "there are two other parties in this case who have been defaulted [DUSLAK and SESMAN]" and that "this settlement does not affect them." See, October 18, 2019 transcript at P. 6 L. 16-21. The October 18, 2019 transcript further confirms that the settling parties agreed the settlement only involved the parties that had "actively litigated and PW JAMES". See October 18, 2019 transcript at P. 8 L. 2-3. The October 18, 2019 transcript also confirms the settling parties agreed that "nothing in any of these releases or settlement . . . affects any rights Dr. Russo may have against any person or entity related to the claims of the two individuals who have been defaulted [DUSLAK and SESMAN]". See, October 18, 2019 transcript at p. 11 L. 3-9. There is no record of any motion to intervene being filed before the October 10, 2019 trial concluded on October 18, 2019.~~

A settlement was reached between, inter alia, Plaintiff Russo on the one hand and Defendant Sunrise Villas IX Homeowners Association ("Sunrise HOA") on the other hand which was reduced to writing.

Following the execution of the settlement agreement, ———RUSSO filed an Application for Judgment by Default on October 31, 2019 which was subsequently scheduled for hearing for December 17, 2019 which Application noted that defaults had previously been entered against Defendants DUSLAK and SESMAN, and which Application sought Judgment against DUSLAK



1 and SESMAN in the amount of \$25,000,000.00. The Application for Judgment by Default was  
2 served on all parties in this matter on October 31, 2019.

3 On October 31, 2019 Joshua Raak, the Deputy Clerk of the Court, sent Notice of Hearing to  
4 all active parties to this matter, including SUNRISE, which notified the said parties that RUSSO's  
5 Application for Judgment by Default would be heard by the Court on December 17, 2019.

6 ——— There is no record of any of the parties filing any opposition(s) to RUSSO's Application for  
7 Judgement by Default.

8 None of the Defendants in this matter appeared at the December 17, 2019 hearing on  
9 RUSSO's Application for Judgment by Default, nor did any of the Defendants, or any other parties  
10 or non-parties, contest RUSSO's Application for Judgment by Default.

11 Following the Hearing on RUSSO's Application for Judgment by Default, the Court entered  
12 Judgment in favor of RUSSO and against DUSLAK and SESMAN as individuals in the amount of  
13 \$25,000,000.00 with interest accruing from the date of entry until paid in full. Notice of Entry of the  
14 said Judgment was served on all parties to this matter on December 17, 2019.

15 ——— There is no record of any motion being filed under NRCP 59 to alter or amend the  
16 Judgment within 28 days after service of written notice of entry of the said Judgment. Indeed, there  
17 is no record of any such motion being filed at any time in 2019 or in 2020.

18 ——— There is no record of any motion being filed under NRCP 60 for relief from the final  
19 Judgment in this matter within six months after the date of the proceeding or after the date of  
20 service of the written notice of entry of the duly entered December 17, 2019 Judgment. Indeed,  
21 there is no record of any such motion being filed at any time in 2019 or in 2020.

22 With a final Judgment having been duly entered in this matter on December 17, 2019, and  
23 no request to set aside the same under NRCP 59, nor any request for relief under NRCP 60 being  
24 filed, the Court statistically closed this case on May 14, 2020.

25 Non-party QBE filed the instant Motion to Intervene to Enforce Settlement on January 4,  
26 2021. SUNRISE filed a Joinder to the said Motion on January 7, 2021. SUNRISE subsequently  
27 filed a Motion to set aside the Judgment. QBE filed a joinder. During the February 11, 2021  
28 hearing on this matter counsel for non-party QBE stated, "we join in the request to set aside the

1 judgment". See, P. 11 L. 7-8. Non-party QBE also described its motion to intervene to enforce  
 2 settlement as an "indirect attack on that judgment" as well. Id at P. 47 L. 14-16.

3 The Court makes the following CONCLUSIONS OF LAW:

4 NRS 12.130 states, "before the trial any person may intervene in an action or proceeding,  
 5 who has an interest in the matter in litigation, in the success of either of the parties, or an interest  
 6 against both." (Emphasis added). Trial commenced in this matter on September 9, 2019, and again  
 7 on October 10, 2019, with the October 10, 2019 trial concluding with the parties placing the  
 8 settlement as to the active parties in this matter on the record on October 18, 2019. There is no  
 9 record of any motion to intervene ever being filed in this matter "before trial" as required by NRS  
 10 12.130.

11 Additionally, the Nevada Supreme Court has held, "The plain language of NRS 12.130 does  
 12 not permit intervention subsequent to the entry of a final judgment." *Lopez v. Merit Insurance Co.*,  
 13 853 P.2d 1266, 1268 (1993). The Nevada Supreme Court has long held that intervention cannot be  
 14 had after a final judgment has been entered. See, *Ryan v. Landis*, 58 Nev. 253, 75 P.2d 734. (1938).  
 15 In *Ryan* the Court adopted the holding from a California decision a decade before which held that  
 16 "in all cases [intervention] must be made before trial." Id (citing *Kelly v. Smith* 204 Cal. 496, 268  
 17 P. 1057 (1928)). The Nevada Supreme Court subsequently held that, "In refusing to allow  
 18 intervention subsequent to the entry of a final judgment, this court has not distinguished between  
 19 judgments entered following trial and judgments entered by default or by agreement of the parties."  
 20 *Lopez v. Merit Insurance Co.*, 853 P.2d 1266, 1268 (1993). In *Lopez* the Court reiterated that "[i]n  
 21 all cases" intervention must be sought before judgment is entered. Id.

22 A recent case in which the Nevada Supreme Court again held that intervention cannot be  
 23 permitted after judgment has been entered is *Nalder v. Eighth Judicial Dist. Ct.*, 136 Nev.Adv.Op.  
 24 24 (2020). The *Nalder* Court explained:

NRS 12.130 provides that "[b]efore the trial, any person may  
 intervene in an action or proceeding, who has an interest in the matter  
 in litigation, in the success of either of the parties, or an interest  
 against both." In *Ryan v. Landis*, in interpreting a nearly identical  
 predecessor to NRS 12.130, we adopted the principle that there could  
 be no intervention after judgment, including default judgments and  
 judgments rendered by agreement of the parties. 58 Nev. 253, 259, 75  
 P.2d 734, 735 (1938). We reaffirmed that principle in *Lopez v. Merit*

1 Insurance Co., 109 Nev. at 556-57, 853 P.2d at 1268. In reversing a  
2 lower court's decision allowing an insurance company to intervene  
3 after judgment, we reasoned, "[t]he plain language of NRS 12.130  
4 does not permit intervention subsequent to entry of a final judgment."  
5 Id. at 556, 853 P.2d at 1268.

6 We do not intend today to disturb that well-settled principle that  
7 intervention may not follow a final judgment, nor do we intend to  
8 undermine the finality and the preclusive effect of final judgments.

9 Id at P. 6-7.

10 During the hearing on this matter non-party QBE advised the Court that in seeking to  
11 intervene, "we join in the request to set aside the judgment". See Transcript from February 11, 2021  
12 hearing at P. 11 L. 7-8. Non-party QBE further advised the Court that it's motion to intervene to  
13 enforce settlement sought to pursue an "indirect attack on that judgment" as well. Id at P. 47 L. 14-  
14 16. The Court in Nalder held that "if [an insurance carrier] wanted to challenge the validity of a  
15 judgment, it could have timely intervened before judgment to become a proper party to the litigation  
16 to challenge it under NRCP 60." Id at P. 7 (footnote 4). The Nalder Court made it clear when it  
17 held, "Nothing permits [an insurance carrier] to intervene after judgment to challenge the validity of  
18 the judgment itself." Id at P. 7. As Nalder does not permit a direct attack on a judgment when  
19 intervention is sought after judgment has been entered, the Court in the instant matter does not  
20 believe the Supreme Court would permit an indirect attack on a judgment when intervention is  
21 sought after judgment has been entered.

22 Non-party QBE's motion also sought leave to intervene under NRCP 24. The Nalder Court,  
23 in recognizing that NRS 12.130 requires that intervention be made before Judgment is entered in a  
24 matter, also held that NRCP 24 must be read in harmony with NRS 12.130. Id at P. 10, citing  
25 Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 993, 860 P.2d 720, 723 (1993) ("Whenever possible, this  
26 court will interpret a rule or statute in harmony with other rules and statutes."). The requirement  
27 under NRCP 24 that a motion to intervene be "timely" must be read in harmony with NRS 12.130  
28 which requires that a motion to intervene be filed "before trial" and before judgment is entered.

~~———— Trial commenced in the instant matter on September 9, 2019, which trial resulted in a  
mistrial. Trial again commenced on October 10, 2019, which trial concluded with the active parties  
advising the Court that a settlement had been reached as to the active parties in this matter, which~~

1 settlement did not include DUSLAK or SESMAN, and with the active parties further advising the  
2 Court on October 18, 2019 that the said settlement would have no affect on RUSSO's rights against  
3 DUSLAK and/or SESMAN.

4 ——— The Court entered a final Judgment against Defendants DUSLAK and SESMAN on  
5 December 17, 2019. Notice of Entry of the said Judgment was served on all parties in this action on  
6 December 17, 2019. As the Court did not receive any motions under NRCP 59 to alter or amend the  
7 duly entered Judgment within 28 days of written notice of entry being served on all parties nor any  
8 motions under NRCP 60 for relief from the said Judgment within six months of written notice of  
9 entry being served on all parties, and as the Court closed this matter May 14, 2020, the finality and  
10 preclusive effect of the Judgment that was duly entered in this matter on December 17, 2019 is well  
11 established. Non-party QBE's January 4, 2021 Motion to Intervene to Enforce Settlement, and  
12 SUNRISE's January 7, 2021 Joinder thereto, were filed well over a year after trial commenced and  
13 subsequently concluded in this matter. The said Motion and Joinder were also filed well over a year  
14 after Judgment was entered in this matter and over a year after notice of entry was served on the  
15 parties in this action.

16 In reliance on NRS 12.130, which states that intervention may occur "before trial", and in  
17 reliance on Nalder, wherein it was determined that it is a well-settled principle that intervention may  
18 not follow a final judgment, nor may intervention undermine the finality and preclusive effects of  
19 final Judgments, Non-party QBE's Motion to Intervene to Enforce Settlement, based on the fact that  
20 it was not filed before trial, and based on the fact that a final Judgment has been entered as to  
21 Defendants DUSLAK and/or SESMAN, shall be and hereby is DENIED. Additionally, Defendant  
22 SUNRISE's Joinder shall also be and hereby is DENIED for the same reasons.

23  
24  
25  
26  
27  
28

# Exhibit E

**William Reeves**

---

**From:** William Reeves <[wreeves@mfrlegal.com](mailto:wreeves@mfrlegal.com)>  
**Sent:** Thursday, April 22, 2021 2:31 PM  
**To:** David Sampson  
**Cc:** Amanda Nalder; Leonard Fink; Shannon Splaine  
**Subject:** RE: Russo

We will involve the Court.

Going forward and in light of repeated issues, do not communicate with the Court ex parte in this matter.

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

**From:** David Sampson [<mailto:davidsampsonlaw@gmail.com>]  
**Sent:** Thursday, April 22, 2021 2:21 PM  
**To:** William Reeves  
**Cc:** Amanda Nalder; Leonard Fink; Shannon Splaine  
**Subject:** Re: Russo

What are you talking about? I told you April 5 that I was submitting the order to the court. You really need to pay attention to what other people say.

Have a nice day.

On Thu, Apr 22, 2021 at 2:18 PM William Reeves <[wreeves@mfrlegal.com](mailto:wreeves@mfrlegal.com)> wrote:

As I suspected. Unfortunate and disappointing. You remain unscrupulous.

William C. Reeves

**MORALES • FIERRO • REEVES**

2151 Salvio Street, Suite 280

Concord, CA 94520

(925) 288-1776

**From:** David Sampson [<mailto:davidsampsonlaw@gmail.com>]  
**Sent:** Thursday, April 22, 2021 9:53 AM  
**To:** William Reeves  
**Cc:** Shannon Splaine; Amanda Nalder; Leonard Fink  
**Subject:** Re: Russo

I haven't acted inappropriately as to any issue (something that unfortunately cannot be said of you given the Court's ruling in this matter). If you have evidence of any inappropriate conduct on my part please provide me with the same. Otherwise please keep your unsupported accusations to yourself.

Have a nice day.



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On Thu, Apr 22, 2021 at 9:35 AM William Reeves <[wreeves@mfrlegal.com](mailto:wreeves@mfrlegal.com)> wrote:

Thanks for finally responding. Good to hear that you did not act inappropriately as to this issue.

Please substantively respond (as I have repeatedly requested) to the inquiries below regarding the attached.

William C. Reeves

**MORALES • FIERRO • REEVES**

2151 Salvio Street, Suite 280

Concord, CA 94520

(925) 288-1776

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

**Sent:** Thursday, April 22, 2021 9:30 AM

**To:** William Reeves

**Cc:** Shannon Splaine; Amanda Nalder; Leonard Fink

**Subject:** Re: Russo

Mr. Reeves,

You have accused me of acting surreptitiously before. You were wrong then, and you are wrong now.

Have a good day,



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On Thu, Apr 22, 2021 at 8:23 AM William Reeves <[wreeves@mfrlegal.com](mailto:wreeves@mfrlegal.com)> wrote:

Unless I am mistaken, an issue previously arose in this case with you surreptitiously providing the Court with a draft order without advising counsel.

Please confirm this has not again occurred as we have held on forwarding a draft order to the Court given that we are waiting for you to respond to our efforts to meet and confer.

William C. Reeves

**MORALES • FIERRO • REEVES**

2151 Salvio Street, Suite 280

Concord, CA 94520

(925) 288-1776

---

**From:** William Reeves [<mailto:wreeves@mfrlegal.com>]

**Sent:** Wednesday, April 21, 2021 5:16 PM

**To:** 'David Sampson'

**Cc:** 'Shannon Splaine'; 'Amanda Nalder'; Leonard Fink

**Subject:** RE: Russo

Following up.

William C. Reeves

**MORALES • FIERRO • REEVES**

2151 Salvio Street, Suite 280

Concord, CA 94520



(925) 288-1776

---

**From:** William Reeves [mailto:wreeves@mfrlegal.com]  
**Sent:** Friday, April 16, 2021 11:42 AM  
**To:** 'David Sampson'  
**Cc:** 'Shannon Splaine'; 'Amanda Nalder'; Leonard Fink  
**Subject:** RE: Russo

Following up.

William C. Reeves

**MORALES • FIERRO • REEVES**

2151 Salvio Street, Suite 280

Concord, CA 94520

(925) 288-1776

---

**From:** William Reeves [mailto:wreeves@mfrlegal.com]  
**Sent:** Tuesday, April 13, 2021 7:42 AM  
**To:** 'David Sampson'  
**Cc:** 'Shannon Splaine'; 'Amanda Nalder'; Leonard Fink  
**Subject:** RE: Russo

David - What is your position regarding the attached?

William C. Reeves

**MORALES • FIERRO • REEVES**

2151 Salvio Street, Suite 280

Concord, CA 94520

(925) 288-1776

**From:** Leonard Fink [mailto:[lfink@springelfink.com](mailto:lfink@springelfink.com)]  
**Sent:** Wednesday, April 07, 2021 10:32 AM  
**To:** William Reeves; 'David Sampson'  
**Cc:** 'Shannon Splaine'; 'Amanda Nalder'  
**Subject:** RE: Russo

Everyone, thanks for giving me a chance to get my feet back under me. I have reviewed Bill's proposed changes, and have nothing further to add. I did, however, have a comment on the findings of fact that I noted on the proposed order. While I understand that Dave put in his papers the issues related to the settlement, none of it has any relevance to this particular motion. The salient issue is the timing of the default judgment against Duslak & Sessman as opposed to QBE's motion to intervene. I think that everything else is just "fluff," at least for this motion. I would be fine if Dave wanted to insert something that says that the parties will deal with those "facts" in the subsequent rulings so that he is not waiving anything here with this order.

Leonard Fink  
 Partner



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

**From:** William Reeves <[wreeves@mfrlegal.com](mailto:wreeves@mfrlegal.com)>  
**Sent:** Monday, April 5, 2021 4:31 PM  
**To:** 'David Sampson' <[davidsampsonlaw@gmail.com](mailto:davidsampsonlaw@gmail.com)>  
**Cc:** Leonard Fink <[lfink@springelfink.com](mailto:lfink@springelfink.com)>; 'Shannon Splaine' <[ssplaine@lgclawoffice.com](mailto:ssplaine@lgclawoffice.com)>; 'Amanda Nalder' <[amanda@davidsampsonlaw.com](mailto:amanda@davidsampsonlaw.com)>  
**Subject:** RE: Russo

See attached.

William C. Reeves

**MORALES • FIERRO • REEVES**

2151 Salvio Street, Suite 280

Concord, CA 94520

(925) 288-1776

**From:** William Reeves [<mailto:wreeves@mfrlegal.com>]  
**Sent:** Monday, April 05, 2021 9:11 AM  
**To:** David Sampson  
**Cc:** Leonard Fink; Shannon Splaine; Amanda Nalder  
**Subject:** RE: Russo

We have suggested changes. Please circulate in Word as requested and we will redline the suggested changes.

William C. Reeves

**MORALES • FIERRO • REEVES**

2151 Salvio Street, Suite 280

Concord, CA 94520

(925) 288-1776

**From:** David Sampson [<mailto:davidsampsonlaw@gmail.com>]  
**Sent:** Monday, April 05, 2021 9:01 AM  
**To:** William Reeves; Leonard Fink; Shannon Splaine; Amanda Nalder  
**Subject:** Russo

Attached is a copy of the proposed Order I will be submitting to the Court in this matter. I appreciate Ms. Splaine's prior comment and have amended the factual findings to reflect that the Court Clerk served the notice of hearing on the active parties.

I added verbiage reflecting that NRS 12.130 allows intervention "before trial", and included factual findings regarding the fact that no intervention was sought before either trial in this matter, nor was leave to intervene sought before trial concluded in this matter on October 18, 2019. I have also added details surrounding how the October trial concluded with a settlement among the active parties to the litigation and that entry of Judgment against the defaulted parties was procured thereafter.

Having now had a chance to review the transcript from the February hearing I have added additional findings of fact and conclusions of law from the said hearing. As I have taken all of the factual findings in the proposed Order directly from the record(s) in this matter I would expect that QBE and SUNRISE would agree that the factual findings set forth in the proposed Order accurately reflect the facts as they occurred. That being said, as Mr. Fink has advised he is out of the office, and as Mr. Reeves has not responded to my prior communications other than to request a word version and to label my behavior "odd", I suspect I will not hear back from either of them regarding any confirmation that the factual findings are indeed accurate. I have therefore removed any reference to QBE and/or SUNRISE agreeing to the same. Instead, the proposed Order reflects that the record(s) in this matter confirm the facts set forth therein.

Thank you,

--

David Sampson, Esq.

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

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

# The Law Office of David Sampson, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Phone: (702) 605-1099

Fax: (888) 209-4199

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Thank you.

---

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--  
**David Sampson, Esq.**

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

**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.

--  
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 F



ELECTRONICALLY SERVED  
4/22/2021 2:12 PM

Electronically Filed  
04/22/2021 2:12 PM

*Heather S. Smith*  
CLERK OF THE COURT

1 **ORD**

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

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

13 SIMONE RUSSO, )

14 Plaintiff, )

15 vs. )

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

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

**ORDER ON MOTION TO  
INTERVENE TO ENFORCE  
SETTLEMENT**

28 Defendants. )

**ORDER ON MOTION TO INTERVENE TO ENFORCE SETTLEMENT**

Non-Party QBE Insurance Corporation's Motion to Intervene to Enforce Settlement, and  
SUNRISE VILLAS IX's Joinder thereto, having come on for hearing the 11<sup>th</sup> day of February,  
2021, the Court having considered the points and authorities on file herein, and oral argument of  
counsel, the Court rules as follows:

1 The Court notes that the pleadings and records in this matter confirm the following

2 **FINDINGS OF FACT:**

3 RUSSO filed the Complaint in this matter on April 6, 2017.

4 The Court GRANTED RUSSO's Motion to Amended the Complaint in this matter to add  
5 claims against Defendants RICHARD DUSLAK ("DUSLAK") and JUSTIN SESMAN  
6 ("SESMAN") on February 7, 2018.

7 RUSSO served the Amended Complaint on Defendant SESMAN on February 13, 2018.

8 RUSSO served the Amended Complaint on Defendant DUSLAK on February 14, 2018.

9 Neither DUSLAK nor SESMAN made any appearance in the instant litigation.

10 The Court Clerk entered a Default against Defendant DUSLAK on September 4, 2019.

11 The Court Clerk entered a Default against Defendant SESMAN on September 13, 2019.

12 Trial commenced in this matter on September 9, 2019, which trial resulted in a mistrial.  
13 There is no record of any motion to intervene being filed before the September 9, 2019 trial.  
14 Trial again commenced on October 10, 2019. There is no record of any motion to intervene  
15 being filed before the October 10, 2019 trial commenced.

16 The October 10, 2019 trial concluded on October 18, 2019 when the parties advised the  
17 Court that a settlement had been reached as to certain parties. The trial transcript from October  
18 18, 2019 confirms that the active parties in this matter advised the Court on that date that a  
19 settlement had been reached as to the active parties in this matter. The October 18, 2019  
20 transcript further confirms the settling parties agreed that "there are two other parties in this case  
21 who have been defaulted [DUSLAK and SESMAN]" and that "this settlement does not affect  
22 them." See, October 18, 2019 transcript at P. 6 L. 16-21. The October 18, 2019 transcript  
23 further confirms that the settling parties agreed the settlement only involved the parties that had

1 “actively litigated and PW JAMES”. *See* October 18, 2019 transcript at P. 8 L. 2-3. The  
2 October 18, 2019 transcript also confirms the settling parties agreed that “nothing in any of  
3 these releases or settlement . . . affects any rights Dr. Russo may have against any person or  
4 entity related to the claims of the two individuals who have been defaulted [DUSLAK and  
5 SESMAN]”. *See*, October 18, 2019 transcript at p. 11 L. 3-9. There is no record of any motion  
6 to intervene being filed before the October 10, 2019 trial concluded on October 18, 2019.  
7

8       RUSSO filed an Application for Judgment by Default on October 31, 2019 which  
9 Application noted that defaults had previously been entered against Defendants DUSLAK and  
10 SESMAN, and which Application sought Judgment against DUSLAK and SESMAN in the  
11 amount of \$25,000,000.00. The Application for Judgment by Default was served on all parties  
12 in this matter on October 31, 2019.  
13

14       On October 31, 2019 Joshua Raak, the Deputy Clerk of the Court, sent Notice of Hearing  
15 to all active parties to this matter, including SUNRISE, which notified the said parties that  
16 RUSSO’s Application for Judgment by Default would be heard by the Court on December 17,  
17 2019.  
18

19       There is no record of any of the parties filing any opposition(s) to RUSSO’s Application  
20 for Judgement by Default.  
21

22       None of the Defendants in this matter appeared at the December 17, 2019 hearing on  
23 RUSSO’s Application for Judgment by Default, nor did any of the Defendants, or any other  
24 parties or non-parties, contest RUSSO’s Application for Judgment by Default.

25       Following the Hearing on RUSSO’s Application for Judgment by Default, the Court  
26 entered Judgment in favor of RUSSO and against DUSLAK and SESMAN as individuals in the  
27  
28

1 amount of \$25,000,000.00 with interest accruing from the date of entry until paid in full. Notice  
2 of Entry of the said Judgment was served on all parties to this matter on December 17, 2019.

3       There is no record of any motion being filed under NRCP 59 to alter or amend the  
4 Judgment within 28 days after service of written notice of entry of the said Judgment. Indeed,  
5 there is no record of any such motion being filed at any time in 2019 or in 2020.

7       There is no record of any motion being filed under NRCP 60 for relief from the final  
8 Judgment in this matter within six months after the date of the proceeding or after the date of  
9 service of the written notice of entry of the duly entered December 17, 2019 Judgment. Indeed,  
10 there is no record of any such motion being filed at any time in 2019 or in 2020.

12       With a final Judgment having been duly entered in this matter on December 17, 2019, and  
13 no request to set aside the same under NRCP 59, nor any request for relief under NRCP 60  
14 being filed, the Court statistically closed this case on May 14, 2020.

15       Non-party QBE filed the instant Motion to Intervene to Enforce Settlement on January 4,  
16 2021. SUNRISE filed a Joinder to the said Motion on January 7, 2021. SUNRISE subsequently  
17 filed a Motion to set aside the Judgment. During the February 11, 2021 hearing on this matter  
18 counsel for non-party QBE stated, “we join in the request to set aside the judgment”. *See*, P. 11  
19 L. 7-8. Non-party QBE also described its motion to intervene to enforce settlement as an  
20 “indirect attack on that judgment” as well. *Id* at P. 47 L. 14-16.

22       The Court makes the following **CONCLUSIONS OF LAW**:

23       NRS 12.130 states, “*before the trial* any person may intervene in an action or proceeding,  
24 who has an interest in the matter in litigation, in the success of either of the parties, or an interest  
25 against both.” (Emphasis added). Trial commenced in this matter on September 9, 2019, and  
26 again on October 10, 2019, with the October 10, 2019 trial concluding with the parties placing  
27  
28

1 the settlement as to the active parties in this matter on the record on October 18, 2019. There is  
2 no record of any motion to intervene ever being filed in this matter “before trial” as required by  
3 NRS 12.130.

4  
5 Additionally, the Nevada Supreme Court has held, “The plain language of NRS 12.130  
6 does not permit intervention subsequent to the entry of a final judgment.” *Lopez v. Merit*  
7 *Insurance Co.*, 853 P.2d 1266, 1268 (1993). The Nevada Supreme Court has long held that  
8 intervention cannot be had after a final judgment has been entered. *See, Ryan v. Landis*, 58  
9 Nev. 253, 75 P.2d 734. (1938). In *Ryan* the Court adopted the holding from a California  
10 decision a decade before which held that “in all cases [intervention] must be made before trial.”  
11 *Id* (citing *Kelly v. Smith* 204 Cal. 496, 268 P. 1057 (1928)). The Nevada Supreme Court  
12 subsequently held that, “In refusing to allow intervention subsequent to the entry of a final  
13 judgment, this court has not distinguished between judgments entered following trial and  
14 judgments entered by default or by agreement of the parties.” *Lopez v. Merit Insurance Co.*,  
15 853 P.2d 1266, 1268 (1993). In *Lopez* the Court reiterated that “[i]n all cases” intervention must  
16 be sought before judgment is entered. *Id*.

17  
18 A recent case in which the Nevada Supreme Court again held that intervention cannot be  
19 permitted after judgment has been entered is *Nalder v. Eighth Judicial Dist. Ct.*, 136  
20 Nev.Adv.Op. 24 (2020). The *Nalder* Court explained:

21  
22  
23 NRS 12.130 provides that “[b]efore the trial, any person may intervene in an action or  
24 proceeding, who has an interest in the matter in litigation, in the success of either of  
25 the parties, or an interest against both.” In *Ryan v. Landis*, in interpreting a nearly  
26 identical predecessor to NRS 12.130, we adopted the principle that there could be no  
27 intervention after judgment, including default judgments and judgments rendered by  
28 agreement of the parties. 58 Nev. 253, 259, 75 P.2d 734, 735 (1938). We reaffirmed  
that principle in *Lopez v. Merit Insurance Co.*, 109 Nev. at 556-57, 853 P.2d at 1268.  
In reversing a lower court’s decision allowing an insurance company to intervene  
after judgment, we reasoned, “[t]he plain language of NRS 12.130 does not permit  
intervention subsequent to entry of a final judgment.” *Id.* at 556, 853 P.2d at 1268.

1 We do not intend today to disturb that well-settled principle that intervention may not  
2 follow a final judgment, nor do we intend to undermine the finality and the preclusive  
3 effect of final judgments.

4 *Id* at P. 6-7.

5 During the hearing on this matter non-party QBE advised the Court that in seeking to  
6 intervene, “we join in the request to set aside the judgment”. *See* Transcript from February 11,  
7 2021 hearing at P. 11 L. 7-8. Non-party QBE further advised the Court that it’s motion to  
8 intervene to enforce settlement sought to pursue an “indirect attack on that judgment” as well.  
9 *Id* at P. 47 L. 14-16. The Court in *Nalder* held that “if [an insurance carrier] wanted to  
10 challenge the validity of a judgment, it could have timely intervened before judgment to become  
11 a proper party to the litigation to challenge it under NRCP 60.” *Id* at P. 7 (footnote 4). The  
12 *Nalder* Court made it clear when it held, “Nothing permits [an insurance carrier] to intervene  
13 after judgment to challenge the validity of the judgment itself.” *Id* at P. 7. As *Nalder* does not  
14 permit a direct attack on a judgment when intervention is sought after judgment has been  
15 entered, the Court in the instant matter does not believe the Supreme Court would permit an  
16 indirect attack on a judgment when intervention is sought after judgment has been entered.  
17

18  
19 Non-party QBE’s motion also sought leave to intervene under NRCP 24. The *Nalder*  
20 Court, in recognizing that NRS 12.130 requires that intervention be made before Judgment is  
21 entered in a matter, also held that NRCP 24 must be read in harmony with NRS 12.130. *Id* at P.  
22 10, citing *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860 P;2d 720, 723 (1993) (“Whenever  
23 possible, this court will interpret a rule or statute in harmony with other rules and statutes.”).  
24 The requirement under NRCP 24 that a motion to intervene be “timely” must be read in  
25 harmony with NRS 12.130 which requires that a motion to intervene be filed “before trial” and  
26 before judgment is entered.  
27  
28

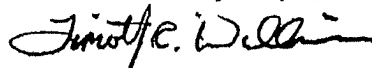
1 Trial commenced in the instant matter on September 9, 2019, which trial resulted in a  
2 mistrial. Trial again commenced on October 10, 2019, which trial concluded with the active  
3 parties advising the Court that a settlement had been reached as to the active parties in this  
4 matter, which settlement did not include DUSLAK or SESMAN, and with the active parties  
5 further advising the Court on October 18, 2019 that the said settlement would have no affect on  
6 RUSSO's rights against DUSLAK and/or SESMAN.  
7

8 The Court entered a final Judgment against Defendants DUSLAK and SESMAN on  
9 December 17, 2019. Notice of Entry of the said Judgment was served on all parties in this  
10 action on December 17, 2019. As the Court did not receive any motions under NRCP 59 to  
11 alter or amend the duly entered Judgment within 28 days of written notice of entry being served  
12 on all parties nor any motions under NRCP 60 for relief from the said Judgment within six  
13 months of written notice of entry being served on all parties, and as the Court closed this matter  
14 May 14, 2020, the finality and preclusive effect of the Judgment that was duly entered in this  
15 matter on December 17, 2019 is well established. Non-party QBE's January 4, 2021 Motion to  
16 Intervene to Enforce Settlement, and SUNRISE's January 7, 2021 Joinder thereto, were filed  
17 well over a year after trial commenced and subsequently concluded in this matter. The said  
18 Motion and Joinder were also filed well over a year after Judgment was entered in this matter  
19 and over a year after notice of entry was served on the parties in this action.  
20  
21  
22

23 In reliance on NRS 12.130, which states that intervention may occur "before trial", and  
24 in reliance on *Nalder*, wherein it was determined that it is a well-settled principle that  
25 intervention may not follow a final judgment, nor may intervention undermine the finality and  
26 preclusive effects of final Judgments, Non-party QBE's Motion to Intervene to Enforce  
27 Settlement, based on the fact that it was not filed before trial, and based on the fact that a final  
28

1 Judgment has been entered as to Defendants DUSLAK and/or SESMAN, shall be and hereby is  
2 DENIED. Additionally, Defendant SUNRISE's Joinder shall also be and hereby is DENIED for  
3 the same reasons.  
4

5 Dated this 22nd day of April, 2021

6 

7 DISTRICT COURT JUDGE

8 Submitted by:

9 LAW OFFICE OF DAVID SAMPSON, LLC

619 EAB 0C8F F7BB  
Timothy C. Williams  
District Court Judge

ZJ

10 BY: /s/ David Sampson

11 DAVID SAMPSON, ESQ.

12 Nevada Bar No.6811

13 LAW OFFICE OF DAVID SAMPSON, LLC.

14 630 S. 3<sup>rd</sup> St.

15 Las Vegas NV 89101

16 Attorney for Plaintiff  
17  
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**Amanda Nalder**

---

**From:** David Sampson <davidsampsonlaw@gmail.com>  
**Sent:** Monday, April 5, 2021 9:01 AM  
**To:** William Reeves; Leonard Fink; Shannon Splaine; Amanda Nalder  
**Subject:** Russo  
**Attachments:** 649. Order on Motion to Intervene.pdf

Attached is a copy of the proposed Order I will be submitting to the Court in this matter. I appreciate Ms. Splaine's prior comment and have amended the factual findings to reflect that the Court Clerk served the notice of hearing on the active parties.

I added verbiage reflecting that NRS 12.130 allows intervention "before trial", and included factual findings regarding the fact that no intervention was sought before either trial in this matter, nor was leave to intervene sought before trial concluded in this matter on October 18, 2019. I have also added details surrounding how the October trial concluded with a settlement among the active parties to the litigation and that entry of Judgment against the defaulted parties was procured thereafter.

Having now had a chance to review the transcript from the February hearing I have added additional findings of fact and conclusions of law from the said hearing. As I have taken all of the factual findings in the proposed Order directly from the record(s) in this matter I would expect that QBE and SUNRISE would agree that the factual findings set forth in the proposed Order accurately reflect the facts as they occurred. That being said, as Mr. Fink has advised he is out of the office, and as Mr. Reeves has not responded to my prior communications other than to request a word version and to label my behavior "odd", I suspect I will not hear back from either of them regarding any confirmation that the factual findings are indeed accurate. I have therefore removed any reference to QBE and/or SUNRISE agreeing to the same. Instead, the proposed Order reflects that the record(s) in this matter confirm the facts set forth therein.

Thank you,

--

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

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

630 S. 3rd St.  
 Las Vegas NV 89101  
 Phone: (702) 605-1099  
 Fax: (888) 209-4199

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

Thank you.

1 **CSERV**

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5  
6 Simone Russo, Plaintiff(s)

CASE NO: A-17-753606-C

7 vs.

DEPT. NO. Department 16

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

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/22/2021

15 Michael Merritt

michael.merritt@mccormickbarstow.com

16 Staci Ibarra

sibarra@lgclawoffice.com

17 Tricia Dorner

tricia.dorner@mccormickbarstow.com

18 "David Sampson, Esq. "

davidsampsonlaw@gmail.com

19 Amanda Nalder .

amanda@davidsampsonlaw.com

20 Chris Turtzo .

turtzo@morrisullivanlaw.com

21 Kristin Thomas .

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22 Michael R Merritt .

Michael.Merritt@mccormickbarstow.com

23 Shannon Splaine

ssplaine@lgclawoffice.com

24 Barbara Pederson

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25 David Clark

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1	Susana Nutt	snutt@lipsonneilson.com
2	Debra Marquez	dmarquez@lipsonneilson.com
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4	Ramiro Morales	rmorales@mfrlegal.com
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8	William Reeves	wreeves@mfrlegal.com
9	Mail Room	espringel@springelfink.com
10	Thomas Levine	tlevine@springelfink.com
11	Jennifer Arledge	jarledge@sgroandroger.com
12	E File	efile@sgroandroger.com
13	Amanda Nalder	phoeny27@gmail.com
14	David Sampson	davidsampsonlaw@gmail.com
15	Tacota Scharp	tscharp@sgroandroger.com
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# Exhibit G

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,	)	
	)	[PROPOSED] ORDER RE: MOTION TO
vs.	)	INTERVENE TO ENFORCE
	)	SETTLEMENT
COX COMMUNICATIONS LAS VEGAS,	)	
INC., et al.	)	
	)	
Defendants.	)	

ORDER ON MOTION TO INTERVENE TO ENFORCE SETTLEMENT

Non-Party QBE Insurance Corporation's Motion to Intervene to Enforce Settlement, and  
 SUNRISE VILLAS IX's Joinder thereto, having come on for hearing the 11th day of February,  
 2021, the Court having considered the points and authorities on file herein, and oral argument of  
 counsel, the Court rules as follows:

The Court notes that the pleadings and records in this matter confirm the following

FINDINGS OF FACT:

RUSSO filed the Complaint in this matter on April 6, 2017.

The Court GRANTED RUSSO's Motion to Amended the Complaint in this matter to add  
 claims against Defendants RICHARD DUSLAK ("DUSLAK") and JUSTIN SESMAN  
 ("SESMAN") on February 7, 2018.

RUSSO served the Amended Complaint on Defendant SESMAN on February 13, 2018.

RUSSO served the Amended Complaint on Defendant DUSLAK on February 14, 2018.

1 Neither DUSLAK nor SESMAN made any appearance in the instant litigation.

2 The Court Clerk entered a Default against Defendant DUSLAK on September 4, 2019.

3 The Court Clerk entered a Default against Defendant SESMAN on September 13, 2019.

4 A settlement was reached between, inter alia, Plaintiff Russo on the one hand and Defendant  
5 Sunrise Villas IX Homeowners Association ("Sunrise HOA") on the other hand which was reduced  
6 to writing.

7 Following the execution of the settlement agreement, RUSSO filed an Application for  
8 Judgment by Default on October 31, 2019 which was subsequently scheduled for hearing for  
9 December 17, 2019.

10 None of the Defendants in this matter appeared at the December 17, 2019 hearing on  
11 RUSSO's Application for Judgment by Default, nor did any of the Defendants, or any other parties  
12 or non-parties, contest RUSSO's Application for Judgment by Default.

13 Following the Hearing on RUSSO's Application for Judgment by Default, the Court entered  
14 Judgment in favor of RUSSO and against DUSLAK and SESMAN as individuals in the amount of  
15 \$25,000,000.00 with interest accruing from the date of entry until paid in full.

16 The Court statistically closed this case on May 14, 2020.

17 Non-party QBE filed the instant Motion to Intervene to Enforce Settlement on January 4,  
18 2021. SUNRISE filed a Joinder to the said Motion on January 7, 2021. SUNRISE subsequently  
19 filed a Motion to set aside the Judgment. QBE filed a joinder.

20 The Court makes the following CONCLUSIONS OF LAW:

21 NRS 12.130 states, "before the trial any person may intervene in an action or proceeding,  
22 who has an interest in the matter in litigation, in the success of either of the parties, or an interest  
23 against both." (Emphasis added). There is no record of any motion to intervene ever being filed in  
24 this matter "before trial" as required by NRS 12.130.

25 Additionally, the Nevada Supreme Court has held, "The plain language of NRS 12.130 does  
26 not permit intervention subsequent to the entry of a final judgment." *Lopez v. Merit Insurance Co.*,  
27 853 P.2d 1266, 1268 (1993). The Nevada Supreme Court has long held that intervention cannot be  
28 had after a final judgment has been entered. See, *Ryan v. Landis*, 58 Nev. 253, 75 P.2d 734. (1938).

1 In Ryan the Court adopted the holding from a California decision a decade before which held that  
 2 “in all cases [intervention] must be made before trial.” Id (citing Kelly v. Smith 204 Cal. 496, 268  
 3 P. 1057 (1928)). The Nevada Supreme Court subsequently held that, “In refusing to allow  
 4 intervention subsequent to the entry of a final judgment, this court has not distinguished between  
 5 judgments entered following trial and judgments entered by default or by agreement of the parties.”  
 6 Lopez v. Merit Insurance Co., 853 P.2d 1266, 1268 (1993). In Lopez the Court reiterated that “[i]n  
 7 all cases” intervention must be sought before judgment is entered. Id.

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

11 NRS 12.130 provides that “[b]efore the trial, any person may  
 12 intervene in an action or proceeding, who has an interest in the matter  
 13 in litigation, in the success of either of the parties, or an interest  
 14 against both.” In Ryan v. Landis, in interpreting a nearly identical  
 15 predecessor to NRS 12.130, we adopted the principle that there could  
 16 be no intervention after judgment, including default judgments and  
 17 judgments rendered by agreement of the parties. 58 Nev. 253, 259, 75  
 18 P.2d 734, 735 (1938). We reaffirmed that principle in Lopez v. Merit  
 19 Insurance Co., 109 Nev. at 556-57, 853 P.2d at 1268. In reversing a  
 20 lower court's decision allowing an insurance company to intervene  
 21 after judgment, we reasoned, “[t]he plain language of NRS 12.130  
 22 does not permit intervention subsequent to entry of a final judgment.”  
 23 Id. at 556, 853 P.2d at 1268.

24 We do not intend today to disturb that well-settled principle that  
 25 intervention may not follow a final judgment, nor do we intend to  
 26 undermine the finality and the preclusive effect of final judgments.

27 Id at P. 6-7.

28 During the hearing on this matter non-party QBE advised the Court that in seeking to  
 intervene, “we join in the request to set aside the judgment”. See Transcript from February 11, 2021  
 hearing at P. 11 L. 7-8. Non-party QBE further advised the Court that it’s motion to intervene to  
 enforce settlement sought to pursue an “indirect attack on that judgment” as well. Id at P. 47 L. 14-  
 16. The Court in Nalder held that “if [an insurance carrier] wanted to challenge the validity of a  
 judgment, it could have timely intervened before judgment to become a proper party to the litigation  
 to challenge it under NRCP 60.” Id at P. 7 (footnote 4). The Nalder Court made it clear when it  
 held, “Nothing permits [an insurance carrier] to intervene after judgment to challenge the validity of



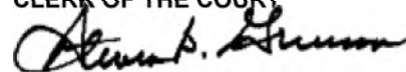
1 the judgment itself.” Id at P. 7. As Nalder does not permit a direct attack on a judgment when  
2 intervention is sought after judgment has been entered, the Court in the instant matter does not  
3 believe the Supreme Court would permit an indirect attack on a judgment when intervention is  
4 sought after judgment has been entered.

5 Non-party QBE’s motion also sought leave to intervene under NRCP 24. The Nalder Court,  
6 in recognizing that NRS 12.130 requires that intervention be made before Judgment is entered in a  
7 matter, also held that NRCP 24 must be read in harmony with NRS 12.130. Id at P. 10, citing  
8 Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 993, 860 P;2d 720, 723 (1993) (“Whenever possible, this  
9 court will interpret a rule or statute in harmony with other rules and statutes.”). The requirement  
10 under NRCP 24 that a motion to intervene be “timely” must be read in harmony with NRS 12.130  
11 which requires that a motion to intervene be filed “before trial” and before judgment is entered.

12 In reliance on NRS 12.130, which states that intervention may occur “before trial”, and in  
13 reliance on Nalder, wherein it was determined that it is a well-settled principle that intervention may  
14 not follow a final judgment, nor may intervention undermine the finality and preclusive effects of  
15 final Judgments, Non-party QBE’s Motion to Intervene to Enforce Settlement, based on the fact that  
16 it was not filed before trial, and based on the fact that a final Judgment has been entered as to  
17 Defendants DUSLAK and/or SESMAN, shall be and hereby is DENIED. Additionally, Defendant  
18 SUNRISE’s Joinder shall also be and hereby is DENIED for the same reasons.



Electronically Filed  
5/10/2021 10:06 AM  
Steven D. Grierson  
CLERK OF THE COURT



**JOIN**  
**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](mailto:ssplaine@lgclawoffice.com)

Attorneys for Defendant,  
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-17-753606-C  
DEPT. No. 16

**DEFENDANT SUNRISE VILLAS IX  
HOMEOWNERS ASSOCIATION'S  
JOINDER TO INTERVENOR QBE  
INSURANCE CORPORATION'S MOTION  
TO AMEND AND/OR MODIFY ORDER**

**Hearing Date: June 10, 2021**  
**Hearing Time: 9:05 a.m.**

COMES NOW, Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter "SUNRISE"), by and through its counsel of record, the law firm of LINCOLN, GUSTAFSON & CERCOS, LLP, and hereby submits, pursuant to EDCR 2.20(d), the following Joinder to Intervenor QBE INSURANCE CORPORATION's Motion to Amend and/or Modify Order as though fully set forth herein.

The arguments presented to the Court in Intervenor QBE INSURANCE CORPORATION's Motion to Amend and/or Modify Order are equally applicable to SUNRISE. This Joinder incorporates

and asserts all the arguments contained in Intervenor QBE INSURANCE CORPORATION's Motion to Amend and/or Modify Order as though fully restated herein.

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 10<sup>th</sup> day of May, 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 Defendant, SUNRISE VILLAS IX  
HOMEOWNERS ASSOCIATION

v:\p-t\qbe\_sunrise\atty notes\drafts\pldgs\20210510\_join\_qbe mot amend\_sdi.docx

**Simone Russo v. Cox Communications Las Vegas, Inc., et al.**  
**Clark County Case No. A-17-753606-C**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10<sup>th</sup> day of May, 2021, I served a copy of the attached **DEFENDANT SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S JOINER TO INTERVENOR QBE INSURANCE CORPORATION'S MOTION TO AMEND AND/OR MODIFY ORDER** via electronic service to all parties on the Odyssey E-Service Master List.

*/s/ Ginger Bellamy*

\_\_\_\_\_  
Ginger Bellamy, an employee  
of the law offices of  
Lincoln, Gustafson & Cercos, LLP

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