

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 13**

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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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	<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
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	<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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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
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97.	Order on Defendant's Motion to Set Aside and/or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement [Denying]	5/26/21	13	2817-2835
98.	Notice of Entry	5/26/21	13	2836-2838

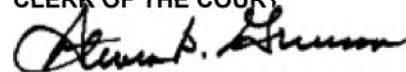
<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 98)	Order Defendant's Motion to Set Aside and/or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement [Denying] [May 26, 2021]		13	2839-2857
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100.	Reply to Opposition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

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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
	<u>Exhibit A:</u> Minute Order: Pending Motions on May 3, 2021		13	2925-2927
	<u>Exhibit B:</u> Order on Defendant's Motion to Set Aside and/or Amend Judgment, and Order on Plaintiff's Motion to Enforce Settlement [May 26, 2021]		13	2928-2947
	<u>Exhibit C:</u> Stipulation between Sunrise Villas IX Homeowners Association and Simone Russo related to case A-17-753606 (Simone Russo v. Cox Communications Las Vegas, Inc.) [November 12, 2019]		13	2948-2950
105.	Notice of Entry of Order Granting Defendant Sunrise Villas IX Homeowners Association's Motion to Release Exhibits from Evidence Vault on Order Shortening Time	6/8/21	13	2951-2952
	Order Granting Defendant Sunrise Villas IX Homeowners Association's Motion to Release Exhibits from Evidence Vault of Order Shortening Time [June 7, 2021]		13	2953-2960

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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
	Exhibit List		13	2964
	<u>Exhibit 1: Medical Treatment Timeline</u>		13	2965-2968
	<u>Exhibit 2: Medical Summary of Plaintiff Simone Russo</u>		13	2969-2970
	<u>Exhibit 3: Medical Records and Billing Records from Center for Disease &amp; Surgery of the Spine</u>		14	2971-3059
	<u>Exhibit 4: Medical Records and Billing Records Kozmary Center for Pain Management</u>		14 15	3060-3210 3211-3235
	<u>Exhibit 5: Medical Records and Billing Records from Pueblo Medical Imaging</u>		15	3236-3246
	<u>Exhibit 6: Medical Records and Billing Records from Desert Radiology</u>		15	3247-3259
	<u>Exhibit 7: Medical Records and Billing Records from SimonMed Imaging</u>		15	3260-3263
	<u>Exhibit 8: Medical Records and Billing Records from Fyzical Therapy and Balance Centers</u>		15	3264-3285
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107.	Notice of Appeal	6/23/21	15	3288-3290
	<u>Exhibit A: Order on Defendant's Motion to Set Aside and/or Amend Judgment, and Order on Plaintiff's Motion to Enforce Settlement [May 26, 2021]</u>		15	3291-3310

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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
<b><u>ADDITIONAL DOCUMENTS</u></b>				
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

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**OPP**

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**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 &amp; G LAWN )

MAINTENANCE, KEVIN BUSHBAKER, )

PWJAMES MANAGEMENT &amp; )

CONSULTING, LLC., J. CHRIS )

SCARCELLI, DOE LANDSCAPER, )

RICHARD DUSLAK, JUSTIN SESMAN, )

AND DOES I-V, and ROE )

CORPORATIONS I-V, inclusive, )

Defendants. )

**OPPOSITION TO MOTION TO AMEND AND/OR MODIFY ORDER**

COMES NOW Plaintiff, SIMONE RUSSO, and hereby files this OPPOSITION to non-party QBE's Motion to Amend and/or Modify Order, which Defendant SUNRISE joined. This Opposition is made and based on the pleadings and papers on file herein, the attached

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

**STATEMENT OF FACTS RELEVANT TO THE INSTANT MOTION<sup>1</sup>**

The Court issued a Minute Order on QBE's motion to intervene on March 31, 2021. The Minute Order read as follows:

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**.

*See*, Exhibit "1" (emphasis in original).

The Court's Minute Order went on to state:

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

*Id* (emphasis added).

On April 1, 2021 counsel for SIMONE sent an email to the adverse parties which stated as follows:

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

<sup>1</sup> As the Court is extremely familiar with the facts and circumstances of this matter SIMONE will not restate the same herein. To the extent QBE's motion sets forth allegations which are related to the underlying motion, but which are not related to the instant motion to amend the Order, SIMONE disputes the said allegations therein and refers the Court to the pleadings on file related to the same for an accurate depiction of what actually transpired.

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.

*See*, Exhibit “2”

The said email included a draft of the proposed Order, which is attached hereto as Exhibit “3”. Four minutes after counsel for SIMONE sent the proposed Order to adverse counsel, counsel for QBE sent a return email wherein counsel barked, “Circulate the draft in Word format.” *See*, Exhibit “4”. Counsel for SIMONE responded by saying, “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.***” *Id* (emphasis added)<sup>2</sup>. Counsel for QBE responded by saying “Odd response. We will review and advise.” *Id*.

The afternoon of April 1, 2021 Shannon Splaine, Esq., counsel for SUNRISE sent an email to counsel for SIMONE which stated:

Lenny is out of the office this week due to spring break. I believe he has limited access right now. I understand the order we are reviewing is not the proposed final version as you await the transcript. I would appreciate the opportunity to review the full order before we provide comments and to confer with my co-counsel before that is submitted to the court.

As to the proposed Findings of Fact, I did have one question on page 2 lines 19-22 as it refers to the court sending notice to all parties about the hearing. I am not clear if that was intended to mean all parties that appeared in the case or that notice of the hearing date was sent to Duslak and Sesman by the Court. I do not have any indication that notice of the hearing date was sent to them, but I could be mistaken and/or that may not be what was intended by that statement.

*See*, Exhibit “5”.

<sup>2</sup> The email included further discussion related to the ongoing Federal action.



As the Court's March 31, 2021 Minute Order specifically instructed counsel for SIMONE to "circulate the order *prior* to submission to the Court to adverse counsel" (*See*, Exhibit "1" (emphasis added)), on April 5, 2021 counsel for SIMONE circulated the proposed order via an email to all adverse parties which stated:

***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.

*See*, Exhibit "6" (emphasis added).

The proposed Order that counsel for SIMONE advised he would be submitting to the Court was attached to the April 5, 2021 email. *See*, Exhibit "7". After circulating the proposed order to adverse counsel in this matter, counsel for SIMONE submitted the same to the Court. Afterwards, counsel for QBE sent an email which stated "We have suggested changes. Please circulate in Word as requested and we will redline the suggested changes." *See*, Exhibit "8". As counsel for SIMONE had already circulated the proposed order to adverse counsel prior to

submitting the same to the Court, and as counsel for SIMONE had already advised adverse counsel that the proposed Order he had sent to them was the Order he was submitting to the Court, counsel for SIMONE had no interest in discussing the matter further.<sup>3</sup>

On April 22, 2021 (which was twenty-two days after the Court issued its May 31, 2021 minute Order) the Court signed the Order that counsel for SIMONE had previously circulated to the adverse parties prior to submitting the same to the Court. It appears that neither counsel for SUNRISE nor counsel for QBE submitted any competing Orders as instructed in the Minute Order and as required under EDCR 7.21.

### **POINTS AND AUTHORITIES**

#### **1. COUNSEL FOR SIMONE FOLLOWED THE COURT’S INSTRUCTIONS AND QBE DID NOT.**

EDCR 7.21 states, “The counsel obtaining any order, judgment or decree must furnish the form of the same to the clerk or judge in charge of the court within 14 days after counsel is notified of the ruling, unless additional time is allowed by the court.” The Court’s March 31, 2021 Minute Order clearly stated counsel for SIMONE was to circulate the proposed Order *prior* to submitting the same to the Court, and further instructed that if counsel could not agree the parties “are to submit competing orders.” See Exhibit “1”. The Court’s Minute Order must be read in conjunction with EDCR 7.21 which requires that if any party wanted to submit a competing order they do so within 14 days of the Minute Order being issued.

As of April 15, 2021, when more than 14 days had passed without any party submitting a competing order, the Court was well within its rights to sign the Order submitted by SIMONE

<sup>3</sup> The fact that counsel for QBE routinely insults, belittles, and has otherwise repeatedly verbally abused counsel for SIMONE has left counsel for SIMONE little motivation to further discuss this matter with counsel for non-party QBE.

which had previously been circulated to all counsel in this action. The fact that the Court signed the said Order on April 22, 2021, which was a week after the deadline pursuant to EDCR 7.21 had run, clearly indicates that if the Court was under the impression there was no dispute regarding the Order SIMONE submitted it was because no other party had submitted a competing order within the time set forth in EDCR 7.21. It is unfortunate that QBE has opted to try to blame counsel for SIMONE when counsel for SIMONE followed the Court's instructions and QBE did not.

Non-Party QBE's motion alleges that "counsel for Plaintiff failed to advise the other parties that the Order had been submitted to this Court." *See*, QBE's motion at P. 1 L. 16-27. QBE's motion however ignores the fact that the Court's Minute Order specifically instructed counsel for SIMONE to "circulate the order *prior* to submission to the Court to adverse counsel". *See*, Exhibit "1" (emphasis added). QBE's motion also fails to acknowledge that counsel for SIMONE did in fact circulate the proposed order to adverse counsel *prior* to submitting the same to the Court. QBE's motion also ignores the fact that when counsel for SIMONE circulated the proposed Order prior to submitting it to the Court, counsel for SIMONE specifically told adverse counsel that "Attached is a copy of the proposed Order I will be submitting to the Court in this matter." *See*, Exhibit "6".

Counsel for SIMONE cannot imagine the level of complaining and accusations of improper conduct that would surely have followed had counsel for SIMONE circulated the proposed Order to adverse counsel contemporaneous with, or even after, submitting the same to the Court. QBE would have undoubtedly complained that SIMONE did not circulate the proposed Order prior to submitting the same to the Court as the March 31, 2021 Minute Order specifically instructed. It is unfortunate that QBE is now complaining that SIMONE followed the Court's instructions as

set forth in the Minute Order. It appears QBE is bound and determined to fault counsel for SIMONE no matter what he does.

QBE's motion further alleges that "this Court was misled into believing that a consensus had been reached regarding the content of the Order while the other parties were unaware that the draft Order had been submitted to this Court for review and consideration." See QBE's motion at P. 1 L. 27 – P. 2 L. 2. These allegations are incorrect on multiple accounts. First, at no time did SIMONE do anything to mislead the Court into believing that any kind of consensus had been reached regarding the content of the Order. SIMONE simply circulated the proposed Order to adverse counsel prior to submitting the same to the Court. ***If anything, QBE and SUNRISE misled the Court into believing a consensus had been reached by failing to submit a competing order within the time frame set forth in EDCR 7.21.*** It is very unfortunate QBE and SUNRISE now seek to blame counsel for SIMONE for their own failures.

Second, adverse counsel were not "unaware" that the draft Order had been submitted to the Court. Counsel for SIMONE sent an initial draft to all adverse counsel on April 1, 2021 seeking comment. Counsel for SIMONE then implemented the changes suggested by Ms. Splaine (which were the only changes any counsel requested) and then on April 5, 2021 counsel for SIMONE sent the proposed Order to all adverse counsel again and stated, "Attached is a copy of the proposed Order I will be submitting to the Court in this matter." See, Exhibit "6".

Counsel for SIMONE followed the Court's instructions and circulated the proposed Order to adverse counsel prior to submitting the same to the Court. QBE's allegations and complaints against counsel for SIMONE for doing exactly as the Court instructed does not provide grounds under NRCP 59 nor NRCP 60 to alter, amend, or modify the duly entered Order.

///

## 2. THE ORDER IS NOT SUBSTANTIVELY FLAWED.

QBE's motion further alleges that "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." *See*, QBE's motion at P. 1 L. 21-23. Yet QBE's motion fails to identify any "extraneous findings" that are contained in the Order.<sup>4</sup> Instead QBE simply nakedly asserts that such alleged "extraneous findings" are included in the Order. Such must not be permitted.

On April 22, 2021 Leonard Fink, Esq., counsel for SUNRISE sent an email to counsel for SIMONE wherein Mr. Fink asserted that several facts included in the Order were "extraneous". Mr. Fink's email stated:

These are the "facts" that you set forth:

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.

As you are well aware, these "facts" are the subject of the other motions pending before the court and your interpretation of what they said or mean versus ours is what is at issue, at least to some degree. Further these "facts" have zero to do with this Motion and the reason that the court denied it. and as Shannon told you, I was out of town. And yes, for the last 17 days, we honestly thought that you had not

<sup>4</sup> As QBE did not identify any "extraneous findings" in its motion, it would be patently unfair and improper for QBE to attempt to identify any such alleges findings in any reply brief. Any reference to such in the reply should therefore be stricken.

submitted it. there are actually emails between us to that affect. And Sunrise hasn't filed anything that was improper.

*See*, Exhibit "9".

Counsel for SIMONE responded as follows:

I'd like to specifically address the facts set forth in the proposed order which you claim are the subject of other motions and which you claim the Court did not consider in reaching its decision denying QBE's untimely motion to intervene.

From your latest email:

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. **(This was discussed on pages 3-5 of my opposition to QBE's motion to intervene)**. 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. **(This was taken directly from pages 3-4 of my opposition to QBE's motion to intervene)**. 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. **(This was taken directly from page 4 of my opposition to QBE's motion to intervene)**. 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. **(This was taken directly from page 5 of my opposition to QBE's motion to intervene)**.

*See*, Exhibit "9" (emphasis in original).

After detailing how each alleged "extraneous finding" was in fact specifically addressed in SIMONE's opposition to QBE's motion to intervene, counsel for SIMONE further explained why it was appropriate to include the findings in the proposed Order. Counsel for SIMONE stated:

The Court's minute Order instructed me to "prepare a Findings of Fact, 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.*" How you can possibly criticize me for including facts that were clearly set forth in my opposition to QBE's motion to intervene (to say nothing of the fact that they are certainly included in

"the entire record") is beyond me. The only possible explanation for your critique is my belief that you are bound and determined to criticize me no matter what I do.

The Court's Order then stated "counsel is to circulate the order prior to submission to the Court to adverse counsel. If counsel can't agree on the contents, the parties are to submit competing orders." I circulated the proposed order on April 1, 2021, and again on April 5, 2021 after I implemented the change Ms. Splaine proposed. As I was to circulate the order to adverse counsel "prior to submission to the Court", I advised you that the order I circulated to you in my April 5, 2021 email was "the proposed Order I will be submitting to the Court in this matter."

*Id* (emphasis added).

While NRCP 59 permits relief from an order, QBE's motion fails to identify anything about the Order that is improper. The Order the Court signed is based on the March 31, 2021 Minute Order, the pleadings on file in this matter, arguments of counsel, and the entire record as Ordered. QBE's naked assertions that the Order is improper, which provide no specifics whatsoever indicating how the Order is at all improper, does not satisfy the requirements set forth in NRCP 59. Non-party QBE's motion should be denied.

### **CONCLUSION**

For the foregoing reasons the Court should DENY the motion to amend and/or modify the duly entered Order in this matter.

DATED this 13<sup>th</sup> day of May, 2021.

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ David Sampson

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

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

Las Vegas NV 89101

Fax No: 888-209-4199

Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, LLC., and that on this 13<sup>th</sup> day of May, 2021, I served a copy of the foregoing **OPPOSITION** via electronic service on all parties on the Odyssey E-Service Master List and also serve the same on any parties not on the said list as follows:

**Via U.S. Mail:**

JUSTIN SESMAN  
4775 Topaz Street, Apt. 235  
Las Vegas, NV 89121

**Via U.S. Mail:**

RICHARD DUSLAK  
4012 Abrams Ave.  
Las Vegas, NV 89110

/s/ *Amanda Nalder*

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



## **EXHIBIT “1”**

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 “2”**



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

**Russo**

1 message

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

Thu, Apr 1, 2021 at 8:42 AM

To: William Reeves &lt;wreeves@mfrlegal.com&gt;, Shannon Splaine &lt;ssplaine@lgclawoffice.com&gt;, Leonard Fink &lt;lfink@springelfink.com&gt;

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.

**649. Order on Motion to Intervene.pdf**

122K

## **EXHIBIT “3”**

**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 &amp; G LAWN )

MAINTENANCE, KEVIN BUSHBAKER, )

PWJAMES MANAGEMENT &amp; )

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  
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:

The Court notes that the pleadings and records in this matter confirm, and QBE Insurance Corporation (“QBE”), SUNRISE VILLAS IX (“SUNRISE”), and Plaintiff SIMONE RUSSO (“RUSSO”) agree to, 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 SESMAN on February 13, 2018.

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

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

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

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

RUSSO filed an Application for Judgment by Default on October 31, 2019 which sought Judgment against DUSLAK and SESMAN in the amount of \$25,000,000.00. The Application for Judgment by Default was served on all parties in this matter on October 31, 2019.

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

No parties filed any opposition(s) to RUSSO’s Application for Judgement by Default.

None of the Defendants in this matter appeared at the December 17, 2019 hearing on RUSSO’s Application for Judgment by Default, nor did any Defendant contest RUSSO’s Application for Judgment by Default.



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

QBE filed the instant Motion to Intervene to Enforce Settlement on January 4, 2021. SUNRISE filed a Joinder to the said Motion on January 7, 2021.

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

NRS 12.130 states, "before 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." The Nevada Supreme Court has held, "The plain language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment." *Lopez v. Merit Insurance Co.*, 853 P.2d 1266, 1268 (1993).

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

The most recent instance in which the Nevada Supreme Court again held that intervention cannot be permitted after judgment has been entered in a case was in *Nalder v.*

*Eighth Judicial Dist. Ct.*, 136 Nev.Adv.Op. 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 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. We do not intend today to disturb that well-settled principle that intervention may not follow a final judgment, nor do we intend to undermine the finality and the preclusive effect of final judgments.

*Id.* at P. 6-7.

The Court entered Final Judgment in this matter against Defendants DUSLAK and SESMAN on December 17, 2019. Notice of Entry of the said Judgment was served on all parties in this action on the same day. QBE's January 4, 2021 Motion to Intervene to Enforce Settlement, and SUNRISE's January 7, 2021 Joinder thereto, were filed well over a year after Judgment was entered in this matter.

///

///

///

In reliance on *Nalder*, 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, Non-party QBE's Motion to Intervene to Enforce Settlement, based on the fact that a final 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.

DATED this \_\_\_\_\_ day of April, 2021.

---

DISTRICT COURT JUDGE

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  
Fax No: 888-209-4199  
Attorney for Plaintiff

**EXHIBIT “4”**



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

**RE: Russo**

1 message

**William Reeves** <wreeves@mfrlegal.com>

Thu, Apr 1, 2021 at 1:06 PM

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

Cc: Shannon Splaine &lt;ssplaine@lgclawoffice.com&gt;, Leonard Fink &lt;lfink@springelfink.com&gt;

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](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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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 “5”**





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

**RE: Russo**

1 message

**Shannon Splaine** <ssplaine@lgclawoffice.com>

Thu, Apr 1, 2021 at 1:12 PM

To: David Sampson &lt;davidsampsonlaw@gmail.com&gt;, William Reeves &lt;wreeves@mfrlegal.com&gt;, Leonard Fink &lt;lfink@springelfink.com&gt;

Cc: Staci Ibarra &lt;sibarra@lgclawoffice.com&gt;

David:

Lenny is out of the office this week due to spring break. I believe he has limited access right now. I understand the order we are reviewing is not the proposed final version as you await the transcript. I would appreciate the opportunity to review the full order before we provide comments and to confer with my co-counsel before that is submitted to the court.

As to the proposed Findings of Fact, I did have one question on page 2 lines 19-22 as it refers to the court sending notice to all parties about the hearing. I am not clear if that was intended to mean all parties that appeared in the case or that notice of the hearing date was sent to Duslak and Sesman by the Court. I do not have any indication that notice of the hearing date was sent to them, but I could be mistaken and/or that may not be what was intended by that statement.

Thank you.

**Shannon G. Splaine, Esq.****LINCOLN, GUSTAFSON & CERCOS LLP****Experience. Integrity. Results.****California   Nevada   Arizona**

550 West C Street, Suite 1400  
San Diego, California [92101](#)  
619.233.1150; 619.233.6949 Fax

[3960 Howard Hughes Parkway, Suite 200](#)  
Las Vegas, Nevada [89169](#)  
702.257.1997; 702.257.2203 Fax

[2415 E. Camelback Rd., Suite 700](#)  
[Phoenix, Arizona 85016](#)  
602.606.5735;  
602.508.6099 Fax

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

The information contained in the text (and attachments) of this e-mail is privileged, confidential and only intended for the addressee(s). Nothing in this email or attachments is intended as tax advice and must not be relied upon in that regard. Please consult your tax advisors.

**From:** David Sampson**Sent:** Thursday, April 01, 2021 8:42 AM**To:** William Reeves <wreeves@mfrlegal.com>; Shannon Splaine <ssplaine@lgclawoffice.com>; Leonard Fink

<lfink@springelfink.com>

**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.

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Las Vegas NV 89101

Phone: (702) 605-1099

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Thank you.

**EXHIBIT “6”**



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

**Russo**

1 message

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

Mon, Apr 5, 2021 at 9:00 AM

To: William Reeves &lt;wreeves@mfrlegal.com&gt;, Leonard Fink &lt;lfink@springelfink.com&gt;, Shannon Splaine &lt;ssplaine@lgclawoffice.com&gt;, Amanda Nalder &lt;amanda@davidsampsonlaw.com&gt;

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.

**649. Order on Motion to Intervene.pdf**

222K

**EXHIBIT “7”**

**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 &amp; G LAWN )

MAINTENANCE, KEVIN BUSHBAKER, )

PWJAMES MANAGEMENT &amp; )

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

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 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.  
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DISTRICT COURT JUDGE

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

**EXHIBIT “8”**



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

**RE: Russo**

1 message

**William Reeves** <wreeves@mfrlegal.com>

Mon, Apr 5, 2021 at 9:11 AM

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

Cc: Leonard Fink &lt;lfink@springelfink.com&gt;, Shannon Splaine &lt;ssplaine@lgclawoffice.com&gt;, Amanda Nalder &lt;amanda@davidsampsonlaw.com&gt;

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](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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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 “9”**



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

**Fwd: Russo**

1 message

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

Sun, May 9, 2021 at 5:39 PM

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

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

Date: Fri, Apr 23, 2021 at 8:02 AM

Subject: Re: Russo

To: Leonard Fink &lt;lfink@springelfink.com&gt;

Cc: Amanda Nalder &lt;amanda@davidsampsonlaw.com&gt;, Shannon Splaine &lt;ssplaine@lgclawoffice.com&gt;, William Reeves &lt;wreeves@mfrlegal.com&gt;

I'd like to specifically address the facts set forth in the proposed order which you claim are the subject of other motions and which you claim the Court did not consider in reaching its decision denying QBE's untimely motion to intervene.

From your latest email:

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. **(This was discussed on pages 3-5 of my opposition to QBE's motion to intervene)**. 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. **(This was taken directly from pages 3-4 of my opposition to QBE's motion to intervene)**. 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. **(This was taken directly from page 4 of my opposition to QBE's motion to intervene)**. 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. **(This was taken directly from page 5 of my opposition to QBE's motion to intervene)**.

The Court's minute Order instructed me to "prepare a Findings of Fact, 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." How you can possibly criticize me for including facts that were clearly set forth in my opposition to QBE's motion to intervene (to say nothing of the fact that they are certainly included in "the entire record") is beyond me. The only possible explanation for your critique is my belief that you are bound and determined to criticize me no matter what I do.

The Court's Order then stated "counsel is to circulate the order prior to submission to the Court to adverse counsel. If counsel can't agree on the contents, the parties are to submit competing orders." I circulated the proposed order on April 1, 2021, and again on April 5, 2021 after I implemented the change Ms. Splaine proposed. As I was to circulate the order to adverse counsel "prior to submission to the Court", I advised you that the order I circulated to you in my April 5, 2021 email was "the proposed Order I will be submitting to the Court in this matter."

Your assertion that "for the last 17 days, we honestly thought that you had not submitted it" flies in the face of my obligation (and yours) under EDCR 7.21 which requires that any order be furnished to the Court within 14 days after counsel is notified of the ruling. As the minute order was issued March 31, 2021 any proposed orders (or competing orders) had to be furnished to the Court on or before April 14, 2021. Perhaps you were willing to wait 17 days (or more) before submitting a proposed order to the Court despite your obligations under EDCR 7.21, but you should not be surprised in the least that I was not.

Regarding your claim that "Sunrise hasn't filed anything that was improper.", I strongly disagree. One need only look to Sunrise's Joinder to QBE's clearly improper post-judgment motion to intervene to appreciate this. In addition, Sunrise's January 21, 2021 "Motion to Set Aside And/Or Amend Judgment" is clearly in violation of NRCP 59(e) which states, "A motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment." Additionally, there is no authority of which I am aware that permits Sunrise to file the numerous "Requests for Judicial Notice" Sunrise has filed in this matter.

Have a nice day,

On Thu, Apr 22, 2021 at 3:56 PM Leonard Fink <[lfink@springelfink.com](mailto:lfink@springelfink.com)> wrote:

Dave, I'm done fighting about this through email. These are the "facts" that you set forth:

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.

As you are well aware, these "facts" are the subject of the other motions pending before the court and your interpretation of what they said or mean versus ours is what is at issue, at least to some degree. Further these "facts" have zero to do with this Motion and the reason that the court denied it. and as Shannon told you, I was out of town. And yes, for the last 17 days, we honestly thought that you had not submitted it. there are actually emails between us to that affect. And Sunrise hasn't filed anything that was improper.

Have a good rest of your day.

Leonard Fink  
Partner

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

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**From:** David Sampson <[davidsampsonlaw@gmail.com](mailto:davidsampsonlaw@gmail.com)>  
**Date:** Thursday, April 22, 2021 at 3:41 PM  
**To:** Leonard Fink <[lfink@springelfink.com](mailto:lfink@springelfink.com)>

**Cc:** William Reeves <[wreeves@mfrlegal.com](mailto:wreeves@mfrlegal.com)>, Amanda Nalder <[amanda@davidsampsonlaw.com](mailto:amanda@davidsampsonlaw.com)>, "ssplaine@lgclawoffice.com" <[ssplaine@lgclawoffice.com](mailto:ssplaine@lgclawoffice.com)>  
**Subject:** Re: Russo

I invite you to identify any findings of fact which you believe the Court never found (in fact I invited you to do that when I sent the proposed order to you and in all the time since you have not identified anything). Certainly Ms. Splaine did not take issue with any of these supposed findings that were set forth in the proposed order I sent to all of you on April 5, 2021. I provided you with the proposed order and advised you I would be submitting the same to the Court. Have you honestly thought for the last 17 days that I was content to leave this matter on the back burner?

As for your comment regarding wasting time and money with the Court, SUNRISE and QBE have been doing that since January of this year. SUNRISE and QBE have no apparent qualms about filing improper motion work no matter the expense of time involved. Please don't try to lay any of this at my feet. I am not going to pretend (and neither should you) that neither you nor QBE would be taking further action with the Court had things concluded in some other fashion.

Thank you,

On Thu, Apr 22, 2021 at 3:32 PM Leonard Fink <[lfink@springelfink.com](mailto:lfink@springelfink.com)> wrote:

Dave, I'm not pointing any fingers at you at all, and I have no idea about my "continued" attempts to do so. I pointed out what your email said and the ones from Bill that came right after. You could and should have responded to those emails, but chose not to do so. It is clear that you threw in items in that order that are now "findings of fact" that both had nothing to do with the actual motion and the court never found. So, we had no idea that you actually sent it to the court. We kept waiting for you to respond and Bill send you several follow ups. Why you wouldn't be clear about this is a mystery to me. So now we all have to waste more time and money to get the court to set aside that order. I can't imagine that Judge Williams will be too thrilled about this.

Leonard Fink

Partner

9075 W. Diablo Drive., Suite 302 | Las Vegas, NV 89148

Tel: (702) 804-0706 | Fax: (702) 804-0798

stoping

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**From:** David Sampson <[davidsampsonlaw@gmail.com](mailto:davidsampsonlaw@gmail.com)>  
**Date:** Thursday, April 22, 2021 at 3:20 PM  
**To:** Leonard Fink <[lfink@springelfink.com](mailto:lfink@springelfink.com)>  
**Cc:** William Reeves <[wreeves@mfrlegal.com](mailto:wreeves@mfrlegal.com)>, Amanda Nalder <[amanda@davidsampsonlaw.com](mailto:amanda@davidsampsonlaw.com)>, "ssplaine@lgclawoffice.com"

<ssplaine@lgclawoffice.com>

**Subject:** Re: Russo

The continued attempts by you and Mr. Reeves to point fingers at me is growing very tiresome. I sent the proposed Order to you, Ms. Splaine, and Mr. Reeves via email on April 1, 2021. That email stated:

"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, "

Ms. Splaine responded with a proposed substantive change, which I incorporated. I did not receive any substantive response from your office, but instead received a notification that you were out of the office until April 4th. Mr. Reeves' did not provide any substantive comment on the proposed order, but instead requested a word version, which I declined to provide.

On April 5, 2021 I sent another email to you, Ms. Splaine, and Mr. Reeves, which stated:

"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,"

I then followed the Court's instructions and submitted the proposed order to the Court, together with a copy of the April 5, 2021 email noted above. It certainly appears the Court read my email differently than you and Mr. Reeves now claim to have read it. I saw no reason to respond when you and Mr. Reeves continued to attempt to communicate with me regarding the proposed order after I had already informed you I was submitting the order to the Court that I provided to you previously. There is nothing improper about anything I did in this matter and I do not appreciate your and/or Mr. Reeves' insinuations and/or accusations.

Thank you,

On Thu, Apr 22, 2021 at 2:28 PM Leonard Fink <[lfink@springelfink.com](mailto:lfink@springelfink.com)> wrote:

Dave, that's not exactly true. You said it was the version that you were going to submit to the court, not that this was going. I took that the same way that Bill did. Also, you sent that email at 9:01 AM on 4/5. Bill responded at 9:11 AM on 4/5 asking for a word copy to make changes. He provided you with those changes at 4:30 on 4/5. I got back into town and sent an email that I agreed with Bill's changes on 4/7. We never heard anything back from you after he sent that email, other than on different issues.

Leonard Fink

Partner

9075 W. Diablo Drive., Suite 302 | Las Vegas, NV 89148

Tel: (702) 804-0706 | Fax: (702) 804-0798

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

**Date:** Thursday, April 22, 2021 at 2:20 PM

**To:** William Reeves <[wreeves@mfrlegal.com](mailto:wreeves@mfrlegal.com)>

**Cc:** Amanda Nalder <[amanda@davidsampsonlaw.com](mailto:amanda@davidsampsonlaw.com)>, Leonard Fink <[lfink@springelfink.com](mailto:lfink@springelfink.com)>, "ssplaine@lgclawoffice.com" <[ssplaine@lgclawoffice.com](mailto:ssplaine@lgclawoffice.com)>

**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](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.

**Error!**  
**Filename**  
**not**  
**specified.**

Virus-free. [www.avast.com](http://www.avast.com)

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](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,

---

**Error!**  
**Filename** Virus-free. [www.avast.com](http://www.avast.com)  
**not**  
**specified.**

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](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](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

image

---

**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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**David Sampson, Esq.**

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Thank you.

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**Filename**  
**not**  
**specified.**

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--

**David Sampson, Esq.**

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630 S. 3rd St.

Las Vegas NV 89101

Phone: (702) 605-1099

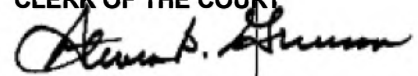
Fax: (888) 209-4199

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Thank you.

Electronically Filed  
5/18/2021 9:02 AM  
Steven D. Grierson  
CLERK OF THE COURT


**SUPP**

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SIMONE RUSSO, )

Plaintiff, )

vs. )

CASE NO: A-17-753606-C

DEPT. NO: XVI

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

Defendants. )

**SUPPLEMENT TO OPPOSITION TO MOTION TO  
AMEND And/Or MODIFY ORDER**

COMES NOW Plaintiff, SIMONE RUSSO, and hereby supplements his OPPOSITION to non-party QBE's Motion to Amend and/or Modify Order, which Defendant SUNRISE joined. In supplementing his opposition SIMONE notes that SIMONE's opposition to the underlying motion to intervene, which the Court denied, included a request that the Court sanction QBE for

1 filing a motion to intervene well after Judgment was entered in this matter. SIMONE notes that  
2  
3 section IV of his opposition, entitled “The Court Should Consider Sanctions Against QBE”, read  
4  
5 as follows:  
6

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

17       The Court denied QBE’s motion to intervene based on the Supreme Court’s holding in  
18  
19 *Nalder* “wherein it was determined that it is a well-settled principle that intervention may not  
20  
21 follow a final judgment, nor may intervention undermine the finality and preclusive effects of  
22  
23 final judgments.” See the Court’s March 31, 2021 Minute Order. The Court then held that  
24  
25 “Accordingly, Non-party QBE’s Motion to Intervene to Enforce Settlement, based on the fact that  
26  
27 a final judgment has been entered as to Defendant Richard Duslak and/or Justin Sesman, shall be  
28  
**DENIED.**” *Id* (emphasis in original).

      Unfortunately the Court’s Minute Order did not address SIMONE’s request for sanctions  
against QBE for filing a motion to intervene well over a year after Judgment had been entered in  
this matter given the Supreme Court’s recognition of the well-settled principle that intervention  
may not follow a final judgment. As QBE has asked the Court to Amend and/or Modify the Order  
in this matter, SIMONE asks that the Court also please rule on his request for sanctions for QBE’s  
clearly improper conduct.

///

///

LAW OFFICE OF DAVID SAMPSON, LLC.

DATED this 18<sup>th</sup> day of May, 2021.

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

## CERTIFICATE OF SERVICE

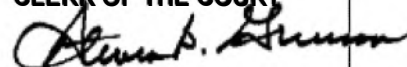
Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, LLC., and that on this 18<sup>th</sup> day of May, 2021, I served a copy of the foregoing **SUPPLEMENT** via electronic service on all parties on the Odyssey E-Service Master List and also serve the same on any parties not on the said list as follows:

**Via U.S. Mail:**

RICHARD DUSLAK  
4012 Abrams Ave.  
Las Vegas, NV 89110

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

Electronically Filed  
5/25/2021 10:33 AM  
Steven D. Grierson  
CLERK OF THE COURT



1 **NOTC**

2 **SHANNON G. SPLAINE, ESQ.**

3 Nevada Bar No. 8241

4 **LINCOLN, GUSTAFSON & CERCOS, LLP**

5 **ATTORNEYS AT LAW**

6 3960 Howard Hughes Parkway, Suite 200

7 Las Vegas, Nevada 89169

8 Telephone: (702) 257-1997

9 Facsimile: (702) 257-2203

10 [ssplaine@lgclawoffice.com](mailto:ssplaine@lgclawoffice.com)

11 Attorneys for Defendant,

12 **SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION**

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 **SIMONE RUSSO,**

16 Plaintiff,

17 v.

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

26 Defendants.

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

**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**

27 COMES NOW, Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION  
28 (hereinafter "SUNRISE"), by and through its counsel of record, the law firm of LINCOLN,  
GUSTAFSON & CERCOS, LLP, and hereby submits Notice that a competing proposed Order was  
submitted regarding the above matter. This Notice is being filed so that the competing proposed orders  
become part of the court record.

///

///

1 A true and correct copy of the proposed competing order as submitted to the Court for  
2 consideration is attached hereto as Exhibit "1". A true and correct copy of the proposed competing  
3 order with redline changes for ease of reference with the proposed order submitted by counsel for  
4 Plaintiff is attached as Exhibit "2".

5 DATED this 25<sup>th</sup> day of May, 2021.

6 **LINCOLN, GUSTAFSON & CERCOS, LLP**

7 */s/ Shannon G. Splaine*

8 **SHANNON G. SPLAINE, ESQ.**

9 Nevada Bar No. 8241

10 3960 Howard Hughes Parkway, Suite 200

11 Las Vegas, Nevada 89169

12 Attorneys for Defendant, SUNRISE VILLAS IX  
13 HOMEOWNERS ASSOCIATION

14 v:\p-f\qbe\_sunrise\atty notes\drafts\pldgs\20210521\_notice.competing.order.docx

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

3 **CERTIFICATE OF SERVICE**

4 I HEREBY CERTIFY that on the 25<sup>th</sup> day of May, 2021, I served a copy of the attached  
5 **DEFENDANT SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S NOTICE OF**  
6 **SUBMISSION OF COMPETING ORDER ON DEFENDANT'S MOTION TO SET ASIDE**  
7 **AND/OR AMEND JUDGMENT AND ORDER ON PLAINTIFF'S MOTION TO ENFORCE**  
8 **SETTLEMENT** via electronic service to all parties on the Odyssey E-Service Master List.

9  
10  
11 */s/ Ginger Bellamy*

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

16 V:\P-T\QBE\_Sunrise\POS\20210525\_NOTC\_gkb.doc  
17  
18  
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# Exhibit “1”

**Ginger Bellamy**

---

**From:** Ginger Bellamy  
**Sent:** Friday, May 21, 2021 10:49 AM  
**To:** dc16inbox@clarkcountycourts.us  
**Cc:** Shannon Splaine; david@davidsampsonlaw.com; jfunai@lipsonneilson.com; lfink@springelfink.com; jarledge@sgroandroger.com; Ginger Bellamy; Barbara Pederson  
**Subject:** A-17-753606-C - ORDR- Order on Defendant's Motion to Set Aside and/or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement - Competing Order - Russo v. Cox Communications Las Vegas, Inc., et al.  
**Attachments:** Order On Defendant's Motion To Set Aside and-or Amend Judgment and Order on Plaintiff's Motion to Enforce Settlement - Competing Order.pdf

**Ginger Bellamy, Legal Assistant to  
 Shannon G. Splaine, Esq.  
 Paul D. Ballou, Esq.  
 LINCOLN, GUSTAFSON & CERCOS LLP  
 Experience. Integrity. Results.**

California Nevada Arizona

550 West C Street, Suite 1400  
 San Diego, California 92101  
 619.233.1150; 619.233.6949 Fax

3960 Howard Hughes Parkway, Suite 200  
 Las Vegas, Nevada 89169  
 702.257.1997; 702.257.2203 Fax

2415 E. Camelback Rd., Suite 700  
 Phoenix, Arizona 85016  
 602.606.5735; 602.508.6099 Fax

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

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1 **ORDR**

2 **SHANNON G. SPLAINE, ESQ.**

3 Nevada Bar No. 8241

4 **LINCOLN, GUSTAFSON & CERCOS, LLP**

5 *ATTORNEYS AT LAW*

6 3960 Howard Hughes Parkway, Suite 200

7 Las Vegas, Nevada 89169

8 Telephone: (702) 257-1997

9 Facsimile: (702) 257-2203

10 [ssplaine@lgclawoffice.com](mailto:ssplaine@lgclawoffice.com)

11 Attorneys for Defendant,

12 **SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION**

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 SIMONE RUSSO,

16 Plaintiff,

17 vs.

18 COX COMMUNICATIONS LAS VEGAS,  
19 INC., et al.

20 Defendants.

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

) Dept: XVI

) **ORDER ON DEFENDANT'S MOTION  
TO SET ASIDE AND/OR AMEND  
JUDGMENT AND ORDER ON  
PLAINTIFF'S MOTION TO ENFORCE  
SETTLEMENT**

21 **ORDER ON DEFENDANT'S MOTION TO SET ASIDE AND/OR AMEND JUDGMENT**

22 **AND ORDER ON PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT**

23 Defendant SUNRISE's motion to set aside and/or amend judgment and Plaintiff's motion  
24 to enforce settlement, having come on for hearing the 3rd day of March, 2021, the parties  
25 appearing by and through their counsel of record, the Court having reviewed the papers  
26 submitted, having heard oral argument, and having issued a Minute Order on May 3, 2021 followed  
27 by a subsequent hearing on May 11, 2021 and good cause appearing, the Court rules as follows:

28 ///

///

///

**FINDINGS OF FACT:**

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

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.

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

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

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Trial initially commenced in this matter on September 9, 2019, which trial resulted in a mistrial due to the conduct of one of the venire members. A subsequent trial commenced on October 10, 2019.

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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.

///

1 Counsel for the settling parties then discussed reducing the settlement to writing,  
2 whereupon counsel for the Plaintiff confirmed that in drafting any release or the like related to  
3 the settlement:

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

13 Id at P. 10 L. 24 – P. 11 L 12.

14 Issues arose regarding the memorialization of the settlement leading to the scheduled of a  
15 subsequent hearing on November 7, 2019 in which counsel for SUNRISE raised concerns  
16 regarding the fact that the release of Sunrise HOA did not include employees. Counsel for RUSSO  
17 stated that there was no agreement to release DUSLAK and/or SESMAN when the settlement was  
18 placed on the record on October 18, 2019. Counsel for RUSSO stated, "this idea that if they're  
19 employees, then Sesman and Duslak are out. That was not agreed to." See, November 7, 2019  
20 transcript at P. 23 L. 12-15. Counsel for RUSSO continued by noting that on October 18, 2019 "we  
21 put on the record -- we're not waiving, releasing, or otherwise affecting anything against Sesman or  
22 Duslak. I don't think anyone would dispute that . . . it was a pretty significant point that day." Id at  
23 P. 25 L. 6-16. The Court then asked SUNRISE's counsel, "Mr. Fink, are we disputing that?" Id at P.  
24 25 L. 21-22. Counsel for SUNRISE answered, "My best recollection is that when Mr. Sampson said  
25 he was specifically retaining his rights to go against Mr. Sesman and Mr. Duslak, we all  
26 agreed to that." Id at P. 26 L. 2-5.

27 Based on the stipulation by counsel for Russo that he would limit his claims against Duslak  
28 and Sesman to liability each faced as independent contractors of the HOA, the Court then gave the  
29 settling parties an opportunity to further reduce the terms of the settlement to writing. Counsel for  
30 RUSSO commented that, in reducing the settlement to writing, "along the lines of Sesman and  
31 Duslak, all rights against them, anybody who insures them, you know, all of those are preserved.  
32 They're not affected. I would like to make sure that is crystal clear in whatever iteration we end up

1 with." Id at P. 40 L. 16-22.

2 In reducing the terms of the settlement placed on the record on October 18, 2019 to  
3 writing, the agreement the settling parties signed stated that RUSSO was preserving all rights to  
4 proceed against DUSLAK and SESMAN. The agreement stated that "PLAINTIFF", "Dr. SIMONE  
5 RUSSO" was releasing "SUNRISE EXCLUDING RICHARD DUSLAK AND/OR JUSTIN  
6 SESMAN". See, Settlement Agreement at P. 1 (emphasis in original). Each of the Defendants  
7 included in the agreement were identified as including the Defendants' respective employees, with  
8 the clear exception of SUNRISE. On page one of the agreement the parties are identified. Defendant  
9 IES RESIDENTIAL, INC., is identified as:

10 IES RESIDENTIAL, INC. (hereinafter "IES") and its affiliated  
11 companies, and each of their respective past, present and future  
12 officers, directors, members, managers, agents, representatives,  
13 shareholders, partners, associates, employees, attorneys, subsidiaries,  
predecessors, beneficiaries, grantors, grantees, vendees, transferees,  
successors, assigns, heirs, divisions, contractors, joint ventures,  
special purpose entities, legal and equitable owners and insurers;

14 Id.

15 Defendant COX is identified as:

16 COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX  
17 COMMUNICATIONS (hereinafter "COX") and its affiliated  
18 companies, and each of their respective past, present and future  
19 officers, directors, members, managers, agents, representatives,  
20 shareholders, partners, associates, employees, attorneys, subsidiaries,  
predecessors, beneficiaries, grantors, grantees, vendees,  
transferees, successors, assigns, heirs, divisions, contractors, joint  
ventures, special purpose entities, legal and equitable owners and  
insurers;

21 Id.

22 Defendant SUNRISE however is identified as:

23 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION  
24 (hereinafter "SUNRISE") and its affiliated companies, and each of  
25 their respective past, present and future officers, directors, members,  
26 managers, agents, representatives, shareholders, partners, associates,  
27 insurers (Community Association Underwriters, Inc., QBE Insurance  
28 Corporation, Alliant Insurance Services, Inc., DSCM, Inc. and  
Armour Risk Management, Inc. - but only as it relates to  
SUNRISE), EXCLUDING RICHARD DUSLAK AND/OR JUSTIN  
SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH  
THEM, INCLUDING ANY ACTUAL OR POTENTIAL INSURER  
(per the stipulation attached in exhibit "A"), attorneys, subsidiaries,  
predecessors, beneficiaries, grantors, grantees, vendees transferees,



successors, assigns, heirs, divisions, contractors, joint ventures,  
special purpose entities, legal and equitable owners;

Id (emphasis in original).

The word “employees” is not used in the description of SURNISE as a Defendant. Additionally, on page 4 of the release, the description of the released parties includes all of Defendants’ “employees EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN . . .”. Id at P. 4 (emphasis in original). When referencing the employees of any of the settling Defendants it was made more than clear that the term “employees” who were being released did not include DUSLAK or SESMAN as releasees.

The settlement agreement further stated, “PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN”. Id at P. 4. The settlement agreement further confirmed, “ANY LANGUAGE IN THIS RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF’S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE DEEMED NULL AND VOID.” Id (emphasis in original).

Finally, the settlement agreement includes Exhibit A which provides as follows:

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

This Court concludes that the provisions of Exhibit A are superseded by and subject to the balance of provisions in the agreement.

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1       RUSSO filed an Application for Judgment by Default on October 31, 2019 which  
2 Application noted that defaults had previously been entered against Defendants DUSLAK and  
3 SESMAN, and which Application sought Judgment against DUSLAK and SESMAN in the  
4 amount of \$25,000,000.00. The Application for Judgment by Default includes a proof of service  
5 reflecting that it was served on October 31, 2019.

6       On October 31, 2019 Joshua Raak, the Deputy Clerk of the Court, sent Notice of Hearing  
7 to all active parties to this matter, including SUNRISE, which notified the said parties that  
8 RUSSO's Application for Judgment by Default would be heard by the Court on December 17,  
9 2019.

10       There is no record of any of the parties filing any opposition(s) to RUSSO's Application  
11 for Judgement by Default. None of the Defendants in this matter appeared at the December 17,  
12 2019 hearing on RUSSO's Application for Judgment by Default, nor did any of the Defendants, or  
13 any other parties or non-parties, contest RUSSO's Application for Judgment by Default.

14       There is likewise no record of the December 17, 2019 hearing, including the documentation  
15 submitted to the Court for review and consideration, including the settlement agreement executed  
16 by all parties.

17       Following the hearing on RUSSO's Application for Judgment by Default, the Court entered  
18 final Judgment in favor of RUSSO and against DUSLAK and SESMAN in the amount of  
19 \$25,000,000.00 with interest accruing from the date of entry until paid in full. Notice of Entry  
20 of the said final Judgment was served on all parties to this matter on December 17, 2019.

21       There is no record of any motion being filed under NRCP 59 to alter or amend the  
22 Judgment within 28 days after service of written notice of entry of the said Judgment. Indeed,  
23 there is no record of any such motion being filed at any time in 2019 or in 2020. There is no  
24 record of any motion being filed under NRCP 60 for relief from the final Judgment in this  
25 matter within six months after the date of the proceeding or after the date of service of the  
26 written notice of entry of the duly entered December 17, 2019 Judgment. Indeed, there is no  
27 record of any such motion being filed at any time in 2019 or in 2020.

28       ///



1 With a final Judgment having been duly entered in this matter on December 17, 2019 and  
2 notice of entry of the same being served on the same day, and no request to set aside the same  
3 under NRCP 59, nor any request for relief under NRCP 60 being filed, the Court statistically  
4 closed this case on May 14, 2020.

5 SUNRISE filed the instant motion to set aside and/or amend judgment on January 21,  
6 2021. Non-Party QBE filed a joinder to the said motion then subsequently withdrew its joinder  
7 to the same.

8 The Court makes the following CONCLUSIONS OF LAW:

9 Regarding SUNRISE's motion to set aside and/or amend the Judgment entered in this  
10 matter, NRCP 59(e) states "a motion to alter or amend a judgment must be filed no later than 28  
11 days after service of written notice of entry of judgment." SUNRISE's motion to set aside and/or  
12 alter or amend the final Judgment in this matter was filed on January 21, 2021, which  
13 was over a year after Notice of Entry of Judgment was served on the parties in this matter.  
14 SUNRISE's motion to set aside or alter the Judgment was not filed within 28 days after Notice  
15 of Entry of Judgment was served as required under NRCP 59(e) and is therefore denied.

16 Additionally, the Court finds that, in light of the procedural history of the case, there are  
17 no grounds to amend or set aside the Judgment pursuant to NRCP 60(a). The Court finds that  
18 there are no clerical mistakes, oversights or omissions in the duly entered Judgment. The Court  
19 further finds that the final Judgment in his matter was entered exactly as sought in Plaintiff's  
20 Application for Default judgment, which was provided to the active parties in this matter and  
21 which none of the active parties contested. The Court therefore denies SUNRISE's request for  
22 relief under NRCP 60(a).

23 The Court further finds that SUNRISE failed to establish grounds pursuant to NRCP(b)  
24 (1)-(6) to amend or set aside the Default Judgment in this matter. The Court finds that relief is  
25 not warranted under NRCP 60(b)(1) as SUNRISE has not presented the Court with evidence of  
26 mistake, surprise, or excusable neglect that the Court in its discretion would find warranted any  
27 such relief. The Court further finds that relief is not warranted under NRCP 60(b)(2) as  
28 SUNRISE has not presented the Court with evidence of newly discovered evidence that, with

1 reasonable diligence, could not have been discovered in time to move for a new trial under  
 2 NRCP 59(b) that would cause the Court to exercise its discretion to grant such relief. The Court  
 3 also finds that relief is not warranted under NRCP 60(b)(3) as SUNRISE has not presented the  
 4 Court with evidence of fraud, misrepresentation, or misconduct by any opposing party that  
 5 would cause the Court to exercise its discretion to grant such relief.

6 Additionally, under NRCP 60(c)(1),

7 A motion under Rule 60(b) must be made within a reasonable time-and for reasons (1), (2),  
 8 and (3) no more than 6 months after the date of the proceeding or the date of service of written  
 9 notice of entry of judgment or order, whichever date is later. The time for filing the motion cannot  
 10 be extended under Rule 6(b).

11 SUNRISE's motion to set aside and/or alter or amend the Judgment in this matter was  
 12 filed on January 21, 2021, which was over one year after Notice of Entry of Judgment was  
 13 served on the parties in this matter on December 17, 2019. SUNRISE did not file a request for  
 14 relief under NRCP 60(b) (1), (2), or (3) within 6 months after Notice of Entry of Judgment was  
 15 served as required under NRCP 60(c)(1). SUNRISE's requests for relief under NRCP 60(b) (1),  
 16 (2), and/or (3) are therefore also denied as untimely.

17 The Court also finds SUNRISE is not entitled to relief under NRCP 60(b)(4). The  
 18 provisions of NRCP 60(b)(4) concerning void judgments "is normally invoked in a case where  
 19 the court entering the challenged judgment did not have jurisdiction over the parties." *Misty*  
 20 *Management v. District Court*, 83 Nev. 180, 182, 426 P.2d 728, 729 (1967) (citing *LaPotin v.*  
 21 *LaPotin* 75 Nev. 264, 339, P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372, P.2d 679  
 22 (1962)). Judgments are typically deemed "void" in cases where the court entering the  
 23 challenged judgment was itself disqualified from acting, e.g., *Osman v. Cobb*, 77 Nev. 133, 360  
 24 P.2d 258 (1961), or did not have jurisdiction over the parties, e.g., *LaPotin v. LaPotin*, 75 Nev.  
 25 264, 339 P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372 P.2d 679 (1962), or did not have  
 26 jurisdiction over the subject matter of the litigation. *Misty Management v. District Court*, 83  
 27 Nev. 180, 426 P.2d 728 (1967).

28 ///

1 DUSLAK and SESMAN were residents of Clark County Nevada when the underlying  
2 incident occurred. DUSLAK and SESMAN were both served with this suit in Clark County  
3 Nevada. The Court has jurisdiction over DUSLAK and SESMAN as well as the subject matter of  
4 this negligence action. SUNRISE's motion does not assert that there were any jurisdictional  
5 issues over the parties or the subject matter. SUNRISE did not present any evidence of any  
6 jurisdictional issues. Relief is therefore not warranted under NRCP 60(b)(4).

7 NRCP 60(b)(5) allows a court to grant relief from a judgment if the judgment has been  
8 satisfied, released, or discharged. As noted above, SUNRISE did not present evidence that the  
9 duly entered Default Judgment against DUSLAK and SESMAN was satisfied, released, or  
10 discharged. The record is replete with examples of RUSSO confirming, and SUNRISE and the  
11 other active Defendants agreeing, that the settlement did not affect RUSSO's rights against  
12 DUSLAK or SESMAN in any way, that the settlement did not include SUNRISE employees,  
13 that the settlement did not include DUSLAK or SESMAN as employees of any of the  
14 Defendants, and that the settlement agreement specifically and completely excluded DUSLAK  
15 and SESMAN as releasees in all respects. The record further confirms that SUNRISE agreed  
16 RUSSO "shall retain all rights to pursue any claims against RICHARD DUSLAK and/or  
17 JUSTIN SESMAN". As the Judgment against DUSLAK and SESMAN was not satisfied,  
18 released, or discharged, relief is not warranted under NRCP 60(b)(5).

19 NRCP 60(b)(6) permits relief from a judgment for "any other reason that justifies  
20 relief". During the hearing on this matter counsel for RUSSO argued that a request for relief  
21 under NRCP 60(b)(6) must present grounds "other" than those enumerated elsewhere in NRCP  
22 60(b). In response counsel for SUNRISE stated, "Mr. Sampson says that, well, that's going to  
23 mean something different than the grounds that might be discussed in (1), (2), (3), (4), or (b) (1)  
24 (2) (3) (4), but I don't know if there's any law that says that." See Transcript of March 3, 2021  
25 hearing at P. 68 L. 25 – P. 69 L. 4. The Court finds that the plain language of NRCP 60(b)(6)  
26 which permits relief for "any other reason that justifies relief" requires that any relief sought under  
27 NRCP 60(b)(6) be for grounds "other" than the grounds set forth elsewhere in NRCP  
28 60(b)(1-5). SUNRISE has not presented any authority indicating a party may seek relief under

1 NRCP 60(b)(6) for reasons enumerated elsewhere in NRCP 60(b)(1-5). Indeed such a reading  
 2 would be contrary to the purposes of NRCP 60(b)(1-5) as well as NRCP 60(c)(1). As  
 3 SUNRISE has not provided the Court with “any other reason” that would justify relief from the  
 4 Judgment, SUNRISE’s for relief under NRCP 60(b)(6) motion is denied.

5 SUNRISE’s motion requests relief under NRCP 60(d)(3). NRCP 60(d)(3) permits a  
 6 court to set aside a judgment “for fraud upon the court.” Id at 444-445.

7 SUNRISE’s motion does not set forth any proof of wrongdoing by RUSSO, his counsel,  
 8 or the Court, and certainly does not provide clear and convincing evidence of any fraud that  
 9 would subvert the integrity of the Court itself. In its Reply filed February 25, 2021 SUNRISE  
 10 expressly withdrew any intimation or accusation of RUSSO’s counsel committing any fraud or  
 11 misconduct in securing the Default Judgment in this matter. See Reply at P. 5 footnote 5. For  
 12 these reasons, any request for relief under NRCP 60(d)(2) is denied.

13 Based on the foregoing IT IS HEREBY ORDERED ADJUDGED AND DECREED that  
 14 Defendant Sunrise Villa IX Homeowners Association’s Motion to Set Aside and/or Amend the  
 15 Judgment in this matter be, and hereby is, DENIED.

16 Regarding RUSSO’s motion to enforce the settlement, under EDCR 7.50 an agreement  
 17 between parties is effective if the same is entered in the minutes and/or is in writing subscribed  
 18 by the party against whom the same shall be alleged or the party’s attorney. The agreement that  
 19 was placed on the record on October 18, 2021, in which the active parties to this suit agreed: 1)  
 20 that RUSSO’s rights against DUSLAK and/or SESMAN are not affected by the settlement; 2)  
 21 that the settlement did not include DUSLAK and/or SESMAN; and 3) that nothing in any  
 22 subsequent writing confirming the settlement agreement would affect any rights RUSSO may  
 23 have against DUSLAK and/or SESMAN, is enforceable. RUSSO’s motion to enforce “requests this  
 24 Court enforce the settlement agreement confirmed on the record on October 18, 2019 and  
 25 hold that the settlement did not affect SIMONE’s rights against DUSLAK and/or SESMAN.”  
 26 See Motion at P. 8 L. 2-5.

27 It is hereby ORDERED ADJUDGED AND DECREED that RUSSO’s motion to enforce  
 28 settlement is GRANTED. It is further ORDERED ADJUDGED AND DECREED that the



1 settlement entered into in this matter between the active parties and PW JAMES did not affect any  
2 of RUSSO's rights against DUSLAK and/or SESMAN to any degree.

3         SUNRISE directs the Court to verbiage in the stipulation attached to the settlement  
4 agreement in which RUSSO and SUNRISE stipulated that for purposes of this litigation, in  
5 August 2016 DUSLAK and SESMAN were natural persons who were in the service of  
6 SUNRISE as independent contractors whom SUNRISE compensated and whom SUNRISE had  
7 the non-exclusive right to direct and control. See, SUNRISE's Consolidated Opposition to  
8 Plaintiff's Motions to Enforce Settlement and Reply to QBE's Motion to Enforce at P. 2 L. 12-  
9 27.

10         SUNRISE argues that the language "as independent contractors" found in the stipulation  
11 attached to the Agreement impacts RUSSO's rights against DUSLAK and/or SESMAN and  
12 releases DUSLAK and SESMAN if they are found to be employees of SUNRISE. SUNRISE's  
13 position is without merit as the plain language on page 4 of the settlement agreement states  
14 "PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD  
15 DUSLAK and/or JUSTIN SESMAN".

16         The settlement agreement also states on page 4, "ANY LANGUAGE IN THIS  
17 RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC  
18 PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY  
19 IMPACT PLAINTIFF'S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN  
20 SESMAN . . . SHALL BE DEEMED NULL AND VOID." The stipulation attached to the  
21 settlement Agreement is referenced multiple times in the settlement Agreement itself and is  
22 incorporated into the Agreement. See, Bryan A. Garner, ed. (2001), Black's Law  
23 Dictionary (2nd pocket ed.). St. Paul, MN: West Group. p. 341. ISBN 0-314-25791-8.  
24 Incorporation by reference is the act of including a second document within another document  
25 by only mentioning the second document. When a document is mentioned in a main document,  
26 the entire second document is made a part of the main document. Id. When a document is  
27 referenced in a contract, the referenced document becomes a part of the contract for all  
28 purposes. Lincoln Welding Works, Inc. v. Ramirez, 98 Nev. 342, 647 P.2d 381 (1982).

1 The Nevada Supreme Court has held that “where two instruments were executed  
2 together as one transaction they constituted but one instrument or contract, although written on  
3 different pieces of paper.” Haspray v. Pasarelli, 79 Nev. 203, 207-208, 380 P.2d 919, (1963).

4 The Haspray Court went on to say:

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

9 Id.

10 As SUNRISE argues that the language in the stipulation identifying DUSLAK and  
11 SESMAN “as independent contractors” impacts RUSSO’s rights against DUSLAK and  
12 SESMAN, and as the Agreement states that “ANY LANGUAGE THAT WOULD BE READ  
13 TO IN ANY WAY IMPACT PLAINTIFF’S RIGHTS AGAINST RICHARD DUSLAK  
14 and/or JUSTIN SESMAN . . . SHALL BE DEMED NULL AND VOID”, IT IS HEREBY  
15 ORDERED ADJUDGED AND DECREED that the language “as independent contractors” as  
16 found in the stipulation is deemed null and void pursuant to the plain language found on page 4  
17 of the settlement agreement.

18 Paragraph 15 of the agreement, which is found on page 7 states:

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

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 As the language "as independent contractors" is deemed null and void, IT IS HEREBY  
2 ORDERED ADJUDGED AND DECREED that the words "as independent contractors" are  
3 severed and deleted from the Agreement as set forth in paragraph 15, and the remainder of the  
4 Agreement and stipulation, with the words "as independent contractors" deleted shall remain in  
5 full force and effect.

6 IT IS SO ORDERED.

7 DATED this \_\_\_\_ day of May, 2021.

8  
9  
10  
11  
12 \_\_\_\_\_  
DISTRICT COURT JUDGE

13  
14 Submitted by:

15 **LINCOLN, GUSTAFSON & CERCOS, LLP**

16 */s/ Shannon G. Splaine*

17 **SHANNON G. SPLAINE, ESQ.**

Nevada Bar No. 8241

18 3960 Howard Hughes Parkway, Suite 200

Las Vegas, Nevada 89169

19 Attorneys for Defendant,

SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

# Exhibit “2”



xxx  
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 State Bar No.:  
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 3960 Howard Hughes Pkwy., Suite 200  
 Las Vegas, NV 89169  
 Telephone: 702/257-1997  
 Facsimile:

Attorneys for Defendant

DISTRICT COURT  
 CLARK COUNTY, NEVADA

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

ORDER ON DEFENDANT'S MOTION TO SET ASIDE AND/OR AMEND JUDGMENT

AND ORDER ON PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT

Defendant SUNRISE's motion to set aside and/or amend judgment and Plaintiff's motion to enforce settlement, having come on for hearing the 3rd day of March, 2021, the parties appearing by and through their counsel of record, the Court having reviewed the papers submitted, having heard oral argument, and having issued a Minute Order on May 3, 2021 followed by a subsequent hearing on May 11, 2021 and good cause appearing, the Court rules as follows:

FINDINGS OF FACT:

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

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

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

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

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

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

6 Trial initially commenced in this matter on September 9, 2019, which trial resulted in a  
7 mistrial due to the conduct of one of the venire members. A subsequent ~~Trial again~~ commenced on  
8 October 10, 2019.

9 The October 10, 2019 trial concluded on October 18, 2019 when the active parties advised  
10 the Court that a settlement had been reached in this action as to certain parties. The transcript from  
11 October 18, 2019 confirms that the active parties in this matter advised the Court on that date  
12 that a settlement had been reached as to the active parties in this matter.

13 The October 18, 2019 transcript further confirms the settling parties agreed that "there are  
14 two other parties in this case who have been defaulted [DUSLAK and SESMAN]" and that "this  
15 settlement does not affect them." See, October 18, 2019 transcript at P. 6 L. 16-21. The  
16 October 18, 2019 transcript further confirms that the settling parties agreed the settlement only  
17 involved the parties that had "actively litigated and PW JAMES". See October 18, 2019  
18 transcript at P. 8 L. 2-3. The October 18, 2019 transcript also confirms the settling parties  
19 agreed that "nothing in any of these releases or settlement . . . affects any rights Dr. Russo may  
20 have against any person or entity related to the claims of the two individuals who have been  
21 defaulted [DUSLAK and SESMAN]". See, October 18, 2019 transcript at P. 11 L. 3-9.

22 Counsel for the settling parties then discussed reducing the settlement to writing,  
23 whereupon counsel for the Plaintiff confirmed that in drafting any release or the like related to  
24 the settlement:

25 the terms of whatever documents we sign or that my client has asked  
26 to sign comport with what was discussed Wednesday, and what's  
27 being discussed today, and no new terms, and those types of things.  
28 And, I guess, most of all that nothing in any of these releases or any  
of the settlement affects any rights Dr. Russo may have against any  
person or entity related to the claims of the two individuals who have  
been defaulted, and any claims that they may have against anybody

1 would not be affected by this settlement. So as long as we're clear on  
2 all of that.

3 Id at P. 10 L. 24 – P. 11 L. 12.

4 ~~The settling parties agreed that nothing in any of the settlement documents would affect~~  
5 ~~any rights Plaintiff may have against DUSLAK and/or SESMAN.~~

6 Issues arose regarding the memorialization of the settlement leading to the scheduled of a At  
7 a subsequent hearing on November 7, 2019 in which counsel for SUNRISE asked that  
8 DUSLAK and SESMAN be included as releasees if it was determined they were employees of  
9 Defendants raised concerns regarding the fact that the release of Sunrise HOA did not include  
10 employees. Counsel for RUSSO stated that there was no agreement to release DUSLAK and/or  
11 SESMAN when the settlement was placed on the record on October 18, 2019. Counsel for  
12 RUSSO stated, “this idea that if they're employees, then Sesman and Duslak are out. That was  
13 not agreed to.” See, November 7, 2019 transcript at P. 23 L. 12-15. Counsel for RUSSO  
14 continued by noting that on October 18, 2019 “we put on the record -- we're not waiving,  
15 releasing, or otherwise affecting anything against Sesman or Duslak. I don't think anyone would  
16 dispute that . . . it was a pretty significant point that day.” Id at P. 25 L. 6-16. The Court then asked  
17 SUNRISE’s counsel, “Mr. Fink, are we disputing that?” Id at P. 25 L. 21-22. Counsel for SUNRISE  
18 answered, “My best recollection is that when Mr. Sampson said he was specifically retaining his  
19 rights to go against Mr. Sesman and Mr. Duslak, we all  
20 agreed to that.” Id at P. 26 L. 2-5.

21 Based on the stipulation by counsel for Russo that he would limit his claims against Duslak  
22 and Sesman to liability each faced as independent contractors of the HOA, the Court then gave the  
23 settling parties an opportunity to further reduce the terms of the settlement placed on the record on  
24 October 18, 2019 to writing. Counsel for RUSSO commented that, in reducing the settlement to  
25 writing, “along the lines of Sesman and Duslak, all rights against them, anybody who insures them,  
26 you know, all of those are preserved. They're not affected. I would like to make sure that is crystal  
27 clear in whatever iteration we end up with.” Id at P. 40 L. 16-22.

28 In reducing the terms of the settlement placed on the record on October 18, 2019 to

1 writing, the agreement the settling parties signed stated that RUSSO was preserving all rights to  
 2 proceed against DUSLAK and SESMAN, ~~and that neither DUSLAK and/or SESMAN were~~  
 3 ~~being released even in the event they were subsequently deemed SUNRISE employees.~~ The  
 4 agreement stated that "PLAINTIFF", "Dr. SIMONE RUSSO" was releasing SUNRISE  
 5 EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN". See, Settlement  
 6 Agreement at P. 1 (emphasis in original). Each of the Defendants included in the agreement  
 7 were identified as including the Defendants' respective employees, with the clear exception of  
 8 SUNRISE. On page one of the agreement the parties are identified. Defendant IES  
 9 RESIDENTIAL, INC., is identified as:

10 IES RESIDENTIAL, INC. (hereinafter "IES") and its affiliated  
 11 companies, and each of their respective past, present and future  
 12 officers, directors, members, managers, agents, representatives,  
 13 shareholders, partners, associates, employees, attorneys, subsidiaries,  
 predecessors, beneficiaries, grantors, grantees, vendees, transferees,  
 successors, assigns, heirs, divisions, contractors, joint ventures,  
 special purpose entities, legal and equitable owners and insurers;

14 Id.

15 Defendant COX is identified as:

16 COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX  
 17 COMMUNICATIONS (hereinafter "COX") and its affiliated  
 18 companies, and each of their respective past, present and future  
 19 officers, directors, members, managers, agents, representatives,  
 20 shareholders, partners, associates, employees, attorneys, subsidiaries,  
 predecessors, beneficiaries, grantors, grantees, vendees,  
 transferees, successors, assigns, heirs, divisions, contractors, joint  
 ventures, special purpose entities, legal and equitable owners and  
 insurers;

21 Id.

22 Defendant SUNRISE however is identified as:

23 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION  
 24 (hereinafter "SUNRISE") and its affiliated companies, and each of  
 25 their respective past, present and future officers, directors, members,  
 26 managers, agents, representatives, shareholders, partners, associates,  
 27 insurers (Community Association Underwriters, Inc., QBE Insurance  
 Corporation, Alliant Insurance Services, Inc., DSCM, Inc. and  
 28 Armour Risk Management, Inc. - but only as it relates to  
 SUNRISE), EXCLUDING RICHARD DUSLAK AND/OR JUSTIN  
 SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH  
 THEM, INCLUDING ANY ACTUAL OR POTENTIAL INSURER  
 (per the stipulation attached in exhibit "A"), attorneys, subsidiaries,



predecessors, beneficiaries, grantors, grantees, vendees transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners;

Id (emphasis in original).

The word “employees” is not used in the description of SURNISE as a Defendant. Additionally, on page 4 of the release, the description of the released parties includes all of Defendants’ “employees EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN . . .”. Id at P. 4 (emphasis in original). When referencing the employees of any of the settling Defendants it was made more than clear that the term “employees” who were being released did not include DUSLAK or SESMAN as releasees.

The settlement agreement further stated, “PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN”. Id at P. 4. The settlement agreement further confirmed, “ANY LANGUAGE IN THIS RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF’S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE DEEMED NULL AND VOID.” Id (emphasis in original).

Finally, the settlement agreement includes Exhibit A which provides as follows:

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

This Court concludes that the provisions of Exhibit A are superseded by and subject to the balance of provisions in the agreement.

RUSSO filed an Application for Judgment by Default on October 31, 2019 which

1 Application noted that defaults had previously been entered against Defendants DUSLAK and  
2 SESMAN, and which Application sought Judgment against DUSLAK and SESMAN in the  
3 amount of \$25,000,000.00. The Application for Judgment by Default includes a proof of service  
4 reflecting that it was served on all parties in this matter on October 31, 2019.

5 On October 31, 2019 Joshua Raak, the Deputy Clerk of the Court, sent Notice of Hearing  
6 to all active parties to this matter, including SUNRISE, which notified the said parties that  
7 RUSSO's Application for Judgment by Default would be heard by the Court on December 17,  
8 2019.

9 There is no record of any of the parties filing any opposition(s) to RUSSO's Application  
10 for Judgement by Default. None of the Defendants in this matter appeared at the December 17,  
11 2019 hearing on RUSSO's Application for Judgment by Default, nor did any of the Defendants, or  
12 any other parties or non-parties, contest RUSSO's Application for Judgment by Default.

13 There is likewise no record of the December 17, 2019 hearing, including the documentation  
14 submitted to the Court for review and consideration, including the settlement agreement executed  
15 by all parties.

16 Following the hearing on RUSSO's Application for Judgment by Default, the Court entered  
17 final Judgment in favor of RUSSO and against DUSLAK and SESMAN in the amount of  
18 \$25,000,000.00 with interest accruing from the date of entry until paid in full. Notice of Entry  
19 of the said final Judgment was served on all parties to this matter on December 17, 2019.

20 There is no record of any motion being filed under NRCP 59 to alter or amend the  
21 Judgment within 28 days after service of written notice of entry of the said Judgment. Indeed,  
22 there is no record of any such motion being filed at any time in 2019 or in 2020. There is no  
23 record of any motion being filed under NRCP 60 for relief from the final Judgment in this  
24 matter within six months after the date of the proceeding or after the date of service of the  
25 written notice of entry of the duly entered December 17, 2019 Judgment. Indeed, there is no  
26 record of any such motion being filed at any time in 2019 or in 2020.

27 With a final Judgment having been duly entered in this matter on December 17, 2019 and  
28 notice of entry of the same being served on the same day, and no request to set aside the same

1 under NRCP 59, nor any request for relief under NRCP 60 being filed, the Court statistically  
2 closed this case on May 14, 2020.

3 SUNRISE filed the instant motion to set aside and/or amend judgment on January 21,  
4 2021. Non-Party QBE filed a joinder to the said motion then subsequently withdrew its joinder  
5 to the same.

6 The Court makes the following CONCLUSIONS OF LAW:

7 Regarding SUNRISE's motion to set aside and/or amend the Judgment entered in this  
8 matter, NRCP 59(e) states "a motion to alter or amend a judgment must be filed no later than 28  
9 days after service of written notice of entry of judgment." SUNRISE's motion to set aside and/or  
10 alter or amend the final Judgment in this matter was filed on January 21, 2021, which  
11 was over a year after Notice of Entry of Judgment was served on the parties in this matter.  
12 SUNRISE's motion to set aside or alter the Judgment was not filed within 28 days after Notice  
13 of Entry of Judgment was served as required under NRCP 59(e) and is therefore denied.

14 Additionally, the Court finds that, in light of the procedural history of the case, there are  
15 no grounds to amend or set aside the Judgment pursuant to NRCP 60(a). The Court finds that  
16 there are no clerical mistakes, oversights or omissions in the duly entered Judgment. The Court  
17 further finds that the final Judgment in his matter was entered exactly as sought in Plaintiff's  
18 Application for Default judgment, which was provided to the active parties in this matter and  
19 which none of the active parties contested. The Court therefore denies SUNRISE's request for  
20 relief under NRCP 60(a).

21 The Court further finds that SUNRISE failed to establish grounds pursuant to NRCP(b)  
22 (1)-(6) to amend or set aside the Default Judgment in this matter. The Court finds that relief is  
23 not warranted under NRCP 60(b)(1) as SUNRISE has not presented the Court with evidence of  
24 mistake, surprise, or excusable neglect that the Court in its discretion would find warranted any  
25 such relief. The Court further finds that relief is not warranted under NRCP 60(b)(2) as  
26 SUNRISE has not presented the Court with evidence of newly discovered evidence that, with  
27 reasonable diligence, could not have been discovered in time to move for a new trial under  
28 NRCP 59(b) that would cause the Court to exercise its discretion to grant such relief. The Court

1 also finds that relief is not warranted under NRCP 60(b)(3) as SUNRISE has not presented the  
2 Court with evidence of fraud, misrepresentation, or misconduct by any opposing party that  
3 would cause the Court to exercise its discretion to grant such relief.

4 Additionally, under NRCP 60(c)(1),

5 A motion under Rule 60(b) must be made within a reasonable time-and for reasons (1), (2),  
6 and (3) no more than 6 months after the date of the proceeding or the date of service of written  
7 notice of entry of judgment or order, whichever date is later. The time for filing the motion cannot  
8 be extended under Rule 6(b).

9 SUNRISE's motion to set aside and/or alter or amend the Judgment in this matter was  
10 filed on January 21, 2021, which was over one year after Notice of Entry of Judgment was  
11 served on the parties in this matter on December 17, 2019. SUNRISE did not file a request for  
12 relief under NRCP 60(b) (1), (2), or (3) within 6 months after Notice of Entry of Judgment was  
13 served as required under NRCP 60(c)(1). SUNRISE's requests for relief under NRCP 60(b) (1),  
14 (2), and/or (3) are therefore also denied as untimely.

15 The Court also finds SUNRISE is not entitled to relief under NRCP 60(b)(4). The  
16 provisions of NRCP 60(b)(4) concerning void judgments "is normally invoked in a case where  
17 the court entering the challenged judgment did not have jurisdiction over the parties." *Misty  
18 Management v. District Court*, 83 Nev. 180, 182, 426 P.2d 728, 729 (1967) (citing *LaPotin v.  
19 LaPotin* 75 Nev. 264, 339, P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372, P.2d 679  
20 (1962)). Judgments are typically deemed "void" in cases where the court entering the  
21 challenged judgment was itself disqualified from acting, e.g., *Osman v. Cobb*, 77 Nev. 133, 360  
22 P.2d 258 (1961), or did not have jurisdiction over the parties, e.g., *LaPotin v. LaPotin*, 75 Nev.  
23 264, 339 P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372 P.2d 679 (1962), or did not have  
24 jurisdiction over the subject matter of the litigation. *Misty Management v. District Court*, 83  
25 Nev. 180, 426 P.2d 728 (1967).

26 DUSLAK and SESMAN were residents of Clark County Nevada when the underlying  
27 incident occurred. DUSLAK and SESMAN were both served with this suit in Clark County  
28 Nevada. The Court has jurisdiction over DUSLAK and SESMAN as well as the subject matter of



1 this negligence action. SUNRISE's motion does not assert that there were any jurisdictional  
2 issues over the parties or the subject matter. SUNRISE did not present any evidence of any  
3 jurisdictional issues. Relief is therefore not warranted under NRCP 60(b)(4).

4 NRCP 60(b)(5) allows a court to grant relief from a judgment if the judgment has been  
5 satisfied, released, or discharged. As noted above, SUNRISE did not present evidence that the  
6 duly entered Default Judgment against DUSLAK and SESMAN was satisfied, released, or  
7 discharged. The record is replete with examples of RUSSO confirming, and SUNRISE and the  
8 other active Defendants agreeing, that the settlement did not affect RUSSO's rights against  
9 DUSLAK or SESMAN in any way, that the settlement did not include SUNRISE employees,  
10 that the settlement did not include DUSLAK or SESMAN as employees of any of the  
11 Defendants, and that the settlement agreement specifically and completely excluded DUSLAK  
12 and SESMAN as releasees in all respects. The record further confirms that SUNRISE agreed  
13 RUSSO "shall retain all rights to pursue any claims against RICHARD DUSLAK and/or  
14 JUSTIN SESMAN". As the Judgment against DUSLAK and SESMAN was not satisfied,  
15 released, or discharged, relief is not warranted under NRCP 60(b)(5).

16 NRCP 60(b)(6) permits relief from a judgment for "any other reason that justifies  
17 relief". During the hearing on this matter counsel for RUSSO argued that a request for relief  
18 under NRCP 60(b)(6) must present grounds "other" than those enumerated elsewhere in NRCP  
19 60(b). In response counsel for SUNRISE stated, "Mr. Sampson says that, well, that's going to  
20 mean something different than the grounds that might be discussed in (1), (2), (3), (4), or (b) (1)  
21 (2) (3) (4), but I don't know if there's any law that says that." See Transcript of March 3, 2021  
22 hearing at P. 68 L. 25 – P. 69 L. 4. The Court finds that the plain language of NRCP 60(b)(6)  
23 which permits relief for "any other reason that justifies relief" requires that any relief sought under  
24 NRCP 60(b)(6) be for grounds "other" than the grounds set forth elsewhere in NRCP  
25 60(b)(1-5). SUNRISE has not presented any authority indicating a party may seek relief under  
26 NRCP 60(b)(6) for reasons enumerated elsewhere in NRCP 60(b)(1-5). Indeed such a reading  
27 would be contrary to the purposes of NRCP 60(b)(1-5) as well as NRCP 60(c)(1). As  
28 SUNRISE has not provided the Court with "any other reason" that would justify relief from the

1 Judgment, SUNRISE's for relief under NRCP 60(b)(6) motion is denied.

2 SUNRISE's motion requests relief under NRCP 60(d)(3). NRCP 60(d)(3) permits a  
3 court to set aside a judgment "for fraud upon the court."

4 As the Nevada Supreme Court held in *NC-DSH Inc. v. Garner*, 218 P.3d 853, 858, 125 Nev.  
5 647, 654 (2009):

6 The problem lies in defining what constitutes "fraud upon the court."  
7 Obviously, it cannot mean any conduct of a party or lawyer of which  
8 the court disapproves; among other evils, such a formulation "would  
9 render meaningless the [time] limitation on motions under [Rule]  
10 60(b)(3)." *Kupferman v. Consolidated Research Mfg. Corp.*, 459 F.2d

11 1072, 1078 (2d Cir. 1972) (Friendly, J.), cited with  
12 approval in *Oeehiute*, 97 Nev. at 146 n. 2, 625 P.2d at 570 n. 2, and  
13 *Murphy*, 103 Nev. at 186, 734 P.2d at 739.

14 *Id.* at 858, 654.

15 The Court went on to state:

16 The most widely accepted definition, which we adopt, holds that the  
17 concept embrace[s] only that species of fraud which does, or attempts  
18 to, subvert the integrity of the court itself, or is a fraud perpetrated by  
19 officers of the court so that the judicial machinery cannot perform in  
20 the usual manner its impartial task of adjudging cases . . . and relief  
21 should be denied in the absence of such conduct.

22 *Id.*

23 For a judgment to be set aside for fraud on the court, "the moving party must show clear  
24 and convincing evidence establishing fraud. *U.S. v. Estate of Stonehill*, 660 F.3d 415, 443 (9th  
25 Cir. 2011) (as cited in *Hsu v. Ubs Fin. Servs.* 2014 U.S. Dist. LEXIS 29792 (2014)). The Stonehill  
26 Court went on to note:

27 Fraud on the court should, we believe, embrace only that species of  
28 fraud which does, or attempts to, defile the court itself. . . . [Movant]  
must demonstrate, by clear and convincing evidence, an effort . . . to  
prevent the judicial process from functioning in the usual manner.  
They must show more than perjury or nondisclosure of evidence;  
unless that perjury or nondisclosure was so fundamental that it  
undermined the workings of the adversary process itself.

29 *Id.* at 444-445.

30 SUNRISE's motion does not set forth any proof of wrongdoing by RUSSO, his counsel,  
31 or the Court, and certainly does not provide clear and convincing evidence of any fraud that

1 would subvert the integrity of the Court itself. In its Reply filed February 25, 2021 SUNRISE  
2 expressly withdrew any intimation or accusation of RUSSO's counsel committing any fraud or  
3 misconduct in securing the Default Judgment in this matter. See Reply at P. 5 footnote 5. For  
4 these reasons, any request for relief under NRCP 60(d)(2) is denied.

5 Based on the foregoing IT IS HEREBY ORDERED ADJUDGED AND DECREED that  
6 Defendant Sunrise Villa IX Homeowners Association's Motion to Set Aside and/or Amend the  
7 Judgment in this matter be, and hereby is, DENIED.

8 Regarding RUSSO's motion to enforce the settlement, under EDCR 7.50 an agreement  
9 between parties is effective if the same is entered in the minutes and/or is in writing subscribed  
10 by the party against whom the same shall be alleged or the party's attorney. The agreement that  
11 was placed on the record on October 18, 2021, in which the active parties to this suit agreed: 1)  
12 that RUSSO's rights against DUSLAK and/or SESMAN are not affected by the settlement; 2)  
13 that the settlement did not include DUSLAK and/or SESMAN; and 3) that nothing in any  
14 subsequent writing confirming the settlement agreement would affect any rights RUSSO may  
15 have against DUSLAK and/or SESMAN, is enforceable. RUSSO's motion to enforce "requests this  
16 Court enforce the settlement agreement confirmed on the record on October 18, 2019 and  
17 hold that the settlement did not affect SIMONE's rights against DUSLAK and/or SESMAN."  
18 See Motion at P. 8 L. 2-5.

19 It is hereby ORDERED ADJUDGED AND DECREED that RUSSO's motion to enforce  
20 settlement is GRANTED. It is further ORDERED ADJUDGED AND DECREED that the  
21 settlement entered into in this matter between the active parties and PW JAMES did not affect any  
22 of RUSSO's rights against DUSLAK and/or SESMAN to any degree.

23 SUNRISE directs the Court to verbiage in the stipulation attached to the settlement  
24 agreement in which RUSSO and SUNRISE stipulated that for purposes of this litigation, in  
25 August 2016 DUSLAK and SESMAN were natural persons who were in the service of  
26 SUNRISE as independent contractors whom SUNRISE compensated and whom SUNRISE had  
27 the non-exclusive right to direct and control. See, SUNRISE's Consolidated Opposition to  
28 Plaintiff's Motions to Enforce Settlement and Reply to QBE's Motion to Enforce at P. 2 L. 12-

1 27.

2       SUNRISE argues that the language “as independent contractors” found in the stipulation  
3 attached to the Agreement impacts RUSSO’s rights against DUSLAK and/or SESMAN and  
4 releases DUSLAK and SESMAN if they are found to be employees of SUNRISE. SUNRISE’s  
5 position is without merit as the plain language on page 4 of the settlement agreement states  
6 “PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD  
7 DUSLAK and/or JUSTIN SESMAN”.

8       The settlement agreement also states on page 4, “ANY LANGUAGE IN THIS  
9 RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC  
10 PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY  
11 IMPACT PLAINTIFF’S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN  
12 SESMAN . . . SHALL BE DEEMED NULL AND VOID.” The stipulation attached to the  
13 settlement Agreement is referenced multiple times in the settlement Agreement itself and is  
14 incorporated into the Agreement. See, Bryan A. Garner, ed. (2001), Black's Law  
15 Dictionary (2nd pocket ed.). St. Paul, MN: West Group. p. 341. ISBN 0-314-25791-8.  
16 Incorporation by reference is the act of including a second document within another document  
17 by only mentioning the second document. When a document is mentioned in a main document,  
18 the entire second document is made a part of the main document. Id. When a document is  
19 referenced in a contract, the referenced document becomes a part of the contract for all  
20 purposes. *Lincoln Welding Works, Inc. v. Ramirez*, 98 Nev. 342, 647 P.2d 381 (1982).

21       The Nevada Supreme Court has held that “where two instruments were executed  
22 together as one transaction they constituted but one instrument or contract, although written on  
23 different pieces of paper.” *Haspray v. Pasarelli*, 79 Nev. 203, 207-208, 380 P.2d 919, (1963).

24 The Haspray Court went on to say:

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

1 Id.

2 As SUNRISE argues that the language in the stipulation identifying DUSLAK and  
3 SESMAN "as independent contractors" impacts RUSSO's rights against DUSLAK and  
4 SESMAN, and as the Agreement states that "ANY LANGUAGE THAT WOULD BE READ  
5 TO IN ANY WAY IMPACT PLAINTIFF'S RIGHTS AGAINST RICHARD DUSLAK  
6 and/or JUSTIN SESMAN . . . SHALL BE DEMED NULL AND VOID", IT IS HEREBY  
7 ORDERED ADJUDGED AND DECREED that the language "as independent contractors" as  
8 found in the stipulation is deemed null and void pursuant to the plain language found on page 4  
9 of the settlement agreement.

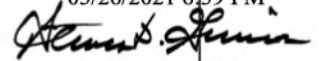
10 Paragraph 15 of the agreement, which is found on page 7 states:

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

15 As the language "as independent contractors" is deemed null and void, IT IS HEREBY  
16 ORDERED ADJUDGED AND DECREED that the words "as independent contractors" are  
17 severed and deleted from the Agreement as set forth in paragraph 15, and the remainder of the  
18 Agreement and stipulation, with the words "as independent contractors" deleted shall remain in  
19 full force and effect.

20 SO ORDERED.





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

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*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 DEFENDANT'S MOTION  
TO SET ASIDE AND/OR AMEND  
JUDGMENT, AND ORDER ON  
PLAINTIFF'S MOTION TO ENFORCE  
SETTLEMENT**

**ORDER ON DEFENDANT'S MOTION TO SET ASIDE AND/OR AMEND JUDGMENT  
AND ORDER ON PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT**

Defendant SUNRISE's motion to set aside and/or amend judgment and Plaintiff's motion to enforce settlement, having come on for hearing the 3<sup>rd</sup> day of March, 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 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  
5 The Court GRANTED RUSSO's Motion to Amended the Complaint in this matter to add  
6 claims against Defendants RICHARD DUSLAK ("DUSLAK") and JUSTIN SESMAN  
7 ("SESMAN") on February 7, 2018.

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

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

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

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

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

13  
14 Trial commenced in this matter on September 9, 2019, which trial resulted in a mistrial  
15 due to the conduct of one of the venire members. Trial again commenced on October 10, 2019.  
16 The October 10, 2019 trial concluded on October 18, 2019 when the active parties advised the  
17 Court that a settlement had been reached in this action as to certain parties. The transcript from  
18 October 18, 2019 confirms that the active parties in this matter advised the Court on that date  
19 that a settlement had been reached as to the active parties in this matter.  
20

21  
22 The October 18, 2019 transcript further confirms the settling parties agreed that "there are  
23 two other parties in this case who have been defaulted [DUSLAK and SESMAN]" and that "this  
24 settlement does not affect them." *See*, October 18, 2019 transcript at P. 6 L. 16-21. The  
25 October 18, 2019 transcript further confirms that the settling parties agreed the settlement only  
26 involved the parties that had "actively litigated and PW JAMES". *See* October 18, 2019  
27 transcript at P. 8 L. 2-3. The October 18, 2019 transcript also confirms the settling parties  
28

1 agreed that “nothing in any of these releases or settlement . . . affects any rights Dr. Russo may  
2 have against any person or entity related to the claims of the two individuals who have been  
3 defaulted [DUSLAK and SESMAN]”. See, October 18, 2019 transcript at P. 11 L. 3-9.  
4

5 Counsel for the settling parties then discussed reducing the settlement to writing,  
6 whereupon counsel for the Plaintiff confirmed that in drafting any release or the like related to  
7 the settlement:

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

15 *Id* at P. 10 L. 24 – P. 11 L. 12.

16 The settling parties agreed that nothing in any of the settlement documents would affect  
17 any rights Plaintiff may have against DUSLAK and/or SESMAN.

18 At a subsequent hearing on November 7, 2019 counsel for SUNRISE asked that  
19 DUSLAK and SESMAN be included as releasees if it was determined they were employees of  
20 Defendants. Counsel for RUSSO stated that there was no agreement to release DUSLAK and/or  
21 SESMAN when the settlement was placed on the record on October 18, 2019. Counsel for  
22 RUSSO stated, “this idea that if they're employees, then Sesman and Duslak are out. That was  
23 not agreed to.” See, November 7, 2019 transcript at P. 23 L. 12-15. Counsel for RUSSO  
24 continued by noting that on October 18, 2019 “we put on the record -- we're not waiving,  
25 releasing, or otherwise affecting anything against Sesman or Duslak. I don't think anyone would  
26 dispute that . . . it was a pretty significant point that day.” *Id* at P. 25 L. 6-16.  
27  
28



1 The Court then asked SUNRISE's counsel, "Mr. Fink, are we disputing that?" *Id* at P. 25  
2 L. 21-22. Counsel for SUNRISE answered, "My best recollection is that when Mr. Sampson  
3 said he was specifically retaining his rights to go against Mr. Sesman and Mr. Duslak, we all  
4 agreed to that." *Id* at P. 26 L. 2-5.

6 The Court then gave the settling parties an opportunity to reduce the terms of the  
7 settlement placed on the record on October 18, 2019 to writing. Counsel for RUSSO  
8 commented that, in reducing the settlement to writing, "along the lines of Sesman and Duslak,  
9 all rights against them, anybody who insures them, you know, all of those are preserved.  
10 They're not affected. I would like to make sure that is crystal clear in whatever iteration we end  
11 up with." *Id* at P. 40 L. 16-22.

13 In reducing the terms of the settlement placed on the record on October 18, 2019 to  
14 writing, the agreement the settling parties signed stated that RUSSO was preserving all rights to  
15 proceed against DUSLAK and SESMAN, and that neither DUSLAK and/or SESMAN were  
16 being released even in the event they were subsequently deemed SUNRISE employees. The  
17 agreement stated that "PLAINTIFF", "Dr. SIMONE RUSSO" was releasing SUNRISE  
18 "EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN". *See*, Settlement  
19 Agreement at P. 1 (emphasis in original). Each of the Defendants included in the agreement  
20 were identified as including the Defendants' respective employees, with the clear exception of  
21  
22

23 ///

24 ///

25 ///

1 SUNRISE. On page one of the agreement the parties are identified. Defendant IES  
2 RESIDENTIAL, INC., is identified as:

3 IES RESIDENTIAL, INC. (hereinafter "IES") and its affiliated companies, and  
4 each of their respective past, present and future officers, directors, members,  
5 managers, agents, representatives, shareholders, partners, associates, employees,  
6 attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees,  
7 transferees, successors, assigns, heirs, divisions, contractors, joint ventures,  
8 special purpose entities, legal and equitable owners and insurers;

9 *Id.*

10 Defendant COX is identified as:

11 COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX  
12 COMMUNICATIONS (hereinafter "COX") and its affiliated companies, and  
13 each of their respective past, present and future officers, directors, members,  
14 managers, agents, representatives, shareholders, partners, associates, employees,  
15 attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees,  
16 transferees, successors, assigns, heirs, divisions, contractors, joint ventures,  
17 special purpose entities, legal and equitable owners and insurers;

18 *Id.*

19 Defendant SUNRISE however is identified as:

20 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter  
21 "SUNRISE") and its affiliated companies, and each of their respective past,  
22 present and future officers, directors, members, managers, agents, representatives,  
23 shareholders, partners, associates, insurers (Community Association  
24 Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc.,  
25 DSCM, Inc. and Armour Risk Management, Inc. - but only as it relates to  
26 SUNRISE), **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN  
27 OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM,  
28 INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the  
stipulation attached in exhibit "A")**, attorneys, subsidiaries, predecessors,  
beneficiaries, grantors, grantees, vendees transferees, successors, assigns, heirs,  
divisions, contractors, joint ventures, special purpose entities, legal and equitable  
owners;

*Id* (emphasis in original).

The word "employees" is not used in the description of SURNISE as a Defendant.

Additionally, on page 4 of the release, the description of the released parties includes all of

1 Defendants’ “employees ***EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN . .***  
2 ***.”*** *Id* at P. 4 (emphasis in original). When referencing the employees of any of the settling  
3 Defendants it was made more than clear that the term “employees” who were being released did  
4 not include DUSLAK or SESMAN as releasees.  
5

6 The settlement agreement further stated, “PLAINTIFF [RUSSO] shall retain all rights to  
7 pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN”. *Id* at P. 4. The  
8 settlement agreement further confirmed, “ANY LANGUAGE IN THIS RELEASE THAT IS  
9 CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY  
10 LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF’S  
11 RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE  
12 DEEMED NULL AND VOID.” *Id* (emphasis in original).  
13

14 RUSSO filed an Application for Judgment by Default on October 31, 2019 which  
15 Application noted that defaults had previously been entered against Defendants DUSLAK and  
16 SESMAN, and which Application sought Judgment against DUSLAK and SESMAN in the  
17 amount of \$25,000,000.00. The Application for Judgment by Default was served on all parties  
18 in this matter on October 31, 2019.  
19

20 On October 31, 2019 Joshua Raak, the Deputy Clerk of the Court, sent Notice of Hearing  
21 to all active parties to this matter, including SUNRISE, which notified the said parties that  
22 RUSSO’s Application for Judgment by Default would be heard by the Court on December 17,  
23 2019.  
24

25 There is no record of any of the parties filing any opposition(s) to RUSSO’s Application  
26 for Judgement by Default. None of the Defendants in this matter appeared at the December 17,  
27 2019 hearing on RUSSO’s Application for Judgment by Default, nor did any of the Defendants,  
28

1 or any other parties or non-parties, contest RUSSO's Application for Judgment by Default.  
2 Following the hearing on RUSSO's Application for Judgment by Default, the Court entered  
3 final Judgment in favor of RUSSO and against DUSLAK and SESMAN in the amount of  
4 \$25,000,000.00 with interest accruing from the date of entry until paid in full. Notice of Entry  
5 of the said final Judgment was served on all parties to this matter on December 17, 2019.  
6

7 There is no record of any motion being filed under NRCP 59 to alter or amend the  
8 Judgment within 28 days after service of written notice of entry of the said Judgment. Indeed,  
9 there is no record of any such motion being filed at any time in 2019 or in 2020. There is no  
10 record of any motion being filed under NRCP 60 for relief from the final Judgment in this  
11 matter within six months after the date of the proceeding or after the date of service of the  
12 written notice of entry of the duly entered December 17, 2019 Judgment. Indeed, there is no  
13 record of any such motion being filed at any time in 2019 or in 2020.  
14

15 With a final Judgment having been duly entered in this matter on December 17, 2019 and  
16 notice of entry of the same being served on the same day, and no request to set aside the same  
17 under NRCP 59, nor any request for relief under NRCP 60 being filed, the Court statistically  
18 closed this case on May 14, 2020.  
19

20 SUNRISE filed the instant motion to set aside and/or amend judgment on January 21,  
21 2021. Non-Party QBE filed a joinder to the said motion then subsequently withdrew its joinder  
22 to the same.  
23

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

25 Regarding SUNRISE's motion to set aside and/or amend the Judgment entered in this  
26 matter, NRCP 59(e) states "a motion to alter or amend a judgment must be filed no later than 28  
27 days after service of written notice of entry of judgment." SUNRISE's motion to set aside  
28

1 and/or alter or amend the final Judgment in this matter was filed on January 21, 2021, which  
2 was over a year after Notice of Entry of Judgment was served on the parties in this matter.  
3 SUNRISE's motion to set aside or alter the Judgment was not filed within 28 days after Notice  
4 of Entry of Judgment was served as required under NRCP 59(e) and is therefore denied.  
5

6 Additionally, the Court finds that, in light of the procedural history of the case, there are  
7 no grounds to amend or set aside the Judgment pursuant to NRCP 60(a). The Court finds that  
8 there are no clerical mistakes, oversights or omissions in the duly entered Judgment. The Court  
9 further finds that the final Judgment in this matter was entered exactly as sought in Plaintiff's  
10 Application for Default judgment, which was provided to the active parties in this matter and  
11 which none of the active parties contested. The Court therefore denies SUNRISE's request for  
12 relief under NRCP 60(a).  
13

14 The Court further finds that SUNRISE failed to establish grounds pursuant to NRCP 60(b)  
15 (1)-(6) to amend or set aside the Default Judgment in this matter. The Court finds that relief is  
16 not warranted under NRCP 60(b)(1) as SUNRISE has not presented the Court with evidence of  
17 mistake, surprise, or excusable neglect that the Court in its discretion would find warranted any  
18 such relief. The Court further finds that relief is not warranted under NRCP 60(b)(2) as  
19 SUNRISE has not presented the Court with evidence of newly discovered evidence that, with  
20 reasonable diligence, could not have been discovered in time to move for a new trial under  
21 NRCP 59(b) that would cause the Court to exercise its discretion to grant such relief. The Court  
22 also finds that relief is not warranted under NRCP 60(b)(3) as SUNRISE has not presented the  
23 Court with evidence of fraud, misrepresentation, or misconduct by any opposing party that  
24 would cause the Court to exercise its discretion to grant such relief.  
25  
26  
27

28 ///

1       Additionally, under NRCP 60(c)(1),

2       A motion under Rule 60(b) must be made within a reasonable time-and for  
3       reasons (1), (2), and (3) no more than 6 months after the date of the proceeding or  
4       the date of service of written notice of entry of judgment or order, whichever date  
5       is later. The time for filing the motion cannot be extended under Rule 6(b).

6       SUNRISE's motion to set aside and/or alter or amend the Judgment in this matter was  
7       filed on January 21, 2021, which was over one year after Notice of Entry of Judgment was  
8       served on the parties in this matter on December 17, 2019. SUNRISE did not file a request for  
9       relief under NRCP 60(b) (1), (2), or (3) within 6 months after Notice of Entry of Judgment was  
10      served as required under NRCP 60(c)(1). SUNRISE's requests for relief under NRCP 60(b) (1),  
11      (2), and/or (3) are therefore also denied as untimely.

12      The Court also finds SUNRISE is not entitled to relief under NRCP 60(b)(4). The  
13      provisions of NRCP 60(b)(4) concerning void judgments "is normally invoked in a case where  
14      the court entering the challenged judgment did not have jurisdiction over the parties." *Misty*  
15      *Management v. District Court*, 83 Nev. 180, 182, 426 P.2d 728, 729 (1967) (citing *LaPotin v.*  
16      *LaPotin* 75 Nev. 264, 339, P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372, P.2d 679  
17      (1962)). Judgments are typically deemed "void" in cases where the court entering the  
18      challenged judgment was itself disqualified from acting, e.g., *Osman v. Cobb*, 77 Nev. 133, 360  
19      P.2d 258 (1961), or did not have jurisdiction over the parties, e.g., *LaPotin v. LaPotin*, 75 Nev.  
20      264, 339 P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372 P.2d 679 (1962), or did not have  
21      jurisdiction over the subject matter of the litigation. *Misty Management v. District Court*, 83  
22      Nev. 180, 426 P.2d 728 (1967).

23      DUSLAK and SESMAN were residents of Clark County Nevada when the underlying  
24      incident occurred. DUSLAK and SESMAN were both served with this suit in Clark County  
25      Nevada. The Court has jurisdiction over DUSLAK and SESMAN as well as the subject matter  
26      incident occurred. DUSLAK and SESMAN were both served with this suit in Clark County  
27      Nevada. The Court has jurisdiction over DUSLAK and SESMAN as well as the subject matter  
28      incident occurred.

1 of this negligence action. SUNRISE's motion does not assert that there were any jurisdictional  
2 issues over the parties or the subject matter. SUNRISE did not present any evidence of any  
3 jurisdictional issues. Relief is therefore not warranted under NRCP 60(b)(4).  
4

5 NRCP 60(b)(5) allows a court to grant relief from a judgment if the judgment has been  
6 satisfied, released, or discharged. As noted above, SUNRISE did not present evidence that the  
7 duly entered Default Judgment against DUSLAK and SESMAN was satisfied, released, or  
8 discharged. The record is replete with examples of RUSSO confirming, and SUNRISE and the  
9 other active Defendants agreeing, that the settlement did not affect RUSSO's rights against  
10 DUSLAK or SESMAN in any way, that the settlement did not include SUNRISE employees,  
11 that the settlement did not include DUSLAK or SESMAN as employees of any of the  
12 Defendants, and that the settlement agreement specifically and completely excluded DUSLAK  
13 and SESMAN as releasees in all respects. The record further confirms that SUNRISE agreed  
14 RUSSO "shall retain all rights to pursue any claims against RICHARD DUSLAK and/or  
15 JUSTIN SESMAN". As the Judgment against DUSLAK and SESMAN was not satisfied,  
16 released, or discharged, relief is not warranted under NRCP 60(b)(5).  
17  
18

19 NRCP 60(b)(6) permits relief from a judgment for "any other reason that justifies  
20 relief". During the hearing on this matter counsel for RUSSO argued that a request for relief  
21 under NRCP 60(b)(6) must present grounds "other" than those enumerated elsewhere in NRCP  
22 60(b). In response counsel for SUNRISE stated, "Mr. Sampson says that, well, that's going to  
23 mean something different than the grounds that might be discussed in (1), (2), (3), (4), or (b) (1)  
24 (2) (3) (4), but I don't know if there's any law that says that." See Transcript of March 3, 2021  
25 hearing at P. 68 L. 25 – P. 69 L. 4. The Court finds that the plain language of NRCP 60(b)(6)  
26 which permits relief for "any other reason that justifies relief" requires that any relief sought  
27  
28

1 under NRCP 60(b)(6) be for grounds “other” than the grounds set forth elsewhere in NRCP  
2 60(b)(1-5). SUNRISE has not presented any authority indicating a party may seek relief under  
3 NRCP 60(b)(6) for reasons enumerated elsewhere in NRCP 60(b)(1-5). Indeed such a reading  
4 would be contrary to the purposes of NRCP 60(b)(1-5) as well as NRCP 60(c)(1). As  
5 SUNRISE has not provided the Court with “any other reason” that would justify relief from the  
6 Judgment, SUNRISE’s request for relief under NRCP 60(b)(6) motion is denied.  
7

8         SUNRISE’s motion requests relief under NRCP 60(d)(3). NRCP 60(d)(3) permits a  
9 court to set aside a judgment “for fraud upon the court.” As the Nevada Supreme Court held in  
10 *NC-DSH Inc. v. Garner*, 218 P.3d 853, 858, 125 Nev. 647, 654 (2009):  
11

12         The problem lies in defining what constitutes "fraud upon the court." Obviously, it  
13 cannot mean any conduct of a party or lawyer of which the court disapproves;  
14 among other evils, such a formulation "would render meaningless the [time]  
15 limitation on motions under [Rule] 60(b)(3)." *Kupferman v. Consolidated*  
16 *Research Mfg. Corp.*, 459 F.2d 1072, 1078 (2d Cir. 1972) (Friendly, J.), cited with  
approval in *Occhiuto*, 97 Nev. at 146 n. 2, 625 P.2d at 570 n. 2, and *Murphy*, 103  
Nev. at 186, 734 P.2d at 739.

17         *Id* at 858, 654.

18         The Court went on to state:

19         The most widely accepted definition, which we adopt, holds that the concept  
20 embrace[s] only that species of fraud which does, or attempts to, subvert the  
21 integrity of the court itself, or is a fraud perpetrated by officers of the court so that  
22 the judicial machinery cannot perform in the usual manner its impartial task of  
adjudging cases . . . and relief should be denied in the absence of such conduct.

23         *Id.*

24         For a judgment to be set aside for fraud on the court, “the moving party must show clear  
25 and convincing evidence establishing fraud. *U.S. v. Estate of Stonehill*, 660 F.3d 415, 443 (9<sup>th</sup>  
26 Cir. 2011) (as cited in *Hsu v. Ubs Fin. Servs.* 2014 U.S. Dist. LEXIS 29792 (2014)).  
27

28         ///



1 The *Stonehill* Court went on to note:

2 Fraud on the court should, we believe, embrace only that species of fraud which  
3 does, or attempts to, defile the court itself. . . . [Movant] must demonstrate, by  
4 clear and convincing evidence, an effort . . . to prevent the judicial process from  
5 functioning in the usual manner. They must show more than perjury or  
6 nondisclosure of evidence, unless that perjury or nondisclosure was so  
7 fundamental that it undermined the workings of the adversary process itself.

8 *Id* at 444-445.

9 SUNRISE's motion does not set forth any proof of wrongdoing by RUSSO, his counsel,  
10 or the Court, and certainly does not provide clear and convincing evidence of any fraud that  
11 would subvert the integrity of the Court itself. In its Reply filed February 25, 2021 SUNRISE  
12 expressly withdrew any intimation or accusation of RUSSO's counsel committing any fraud or  
13 misconduct in securing the Default Judgment in this matter. *See* Reply at P. 5 footnote 5. For  
14 these reasons, any request for relief under NRCP 60(d)(2) is denied.

15 Based on the foregoing IT IS HEREBY ORDERED ADJUDGED AND DECREED that  
16 Defendant Sunrise Villa IX Homeowners Association's Motion to Set Aside and/or Amend the  
17 Judgment in this matter be, and hereby is, DENIED.

18 Regarding RUSSO's motion to enforce the settlement, under EDCR 7.50 an agreement  
19 between parties is effective if the same is entered in the minutes and/or is in writing subscribed  
20 by the party against whom the same shall be alleged or the party's attorney. The agreement that  
21 was placed on the record on October 18, 2021, in which the active parties to this suit agreed: 1)  
22 that RUSSO's rights against DUSLAK and/or SESMAN are not affected by the settlement; 2)  
23 that the settlement did not include DUSLAK and/or SESMAN; and 3) that nothing in any  
24 subsequent writing confirming the settlement agreement would affect any rights RUSSO may  
25 have against DUSLAK and/or SESMAN, is enforceable. RUSSO's motion to enforce "requests  
26  
27  
28

1 this Court enforce the settlement agreement confirmed on the record on October 18, 2019 and  
2 hold that the settlement did not affect SIMONE's rights against DUSLAK and/or SESMAN."  
3 *See* Motion at P. 8 L. 2-5. It is hereby ORDERED ADJUDGED AND DECREED that  
4 RUSSO's motion to enforce settlement is GRANTED. It is further ORDERED ADJUDGED  
5 AND DECREED that the settlement entered into in this matter between the active parties and  
6 PW JAMES did not affect any of RUSSO's rights against DUSLAK and/or SESMAN to any  
7 degree.  
8

9  
10 SUNRISE directs the Court to verbiage in the stipulation attached to the settlement  
11 agreement in which RUSSO and SUNRISE stipulated that for purposes of this litigation, in  
12 August 2016 DUSLAK and SESMAN were natural persons who were in the service of  
13 SUNRISE as independent contractors whom SUNRISE compensated and whom SUNRISE had  
14 the non-exclusive right to direct and control. *See*, SUNRISE's Consolidated Opposition to  
15 Plaintiff's Motions to Enforce Settlement and Reply to QBE's Motion to Enforce at P. 2 L. 12-  
16 27.  
17

18 SUNRISE argues that the language "as independent contractors" found in the stipulation  
19 attached to the Agreement impacts RUSSO's rights against DUSLAK and/or SESMAN and  
20 releases DUSLAK and SESMAN if they are found to be employees of SUNRISE. SUNRISE's  
21 position is without merit as the plain language on page 4 of the settlement agreement states  
22 "PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD  
23 DUSLAK and/or JUSTIN SESMAN".  
24

25 The settlement agreement also states on page 4, "ANY LANGUAGE IN THIS  
26 RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC  
27 PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY  
28

1 IMPACT PLAINTIFF’S RIGHTS AGAINAST RICHARD DUSLAK and/or JUSTIN  
2 SESMAN . . . SHALL BE DEEMED NULL AND VOID.” The stipulation attached to the  
3 settlement Agreement is referenced multiple times in the settlement Agreement itself and is  
4 incorporated into the Agreement. See, Bryan A. Garner, ed. (2001), *Black's Law*  
5 *Dictionary* (2nd pocket ed.). St. Paul, MN: West Group. p. 341. ISBN 0-314-25791-8.  
6 Incorporation by reference is the act of including a second document within another document  
7 by only mentioning the second document. When a document is mentioned in a main document,  
8 the entire second document is made a part of the main document. *Id.* When a document is  
9 referenced in a contract, the referenced document becomes a part of the contract for all  
10 purposes. *Lincoln Welding Works, Inc. v. Ramirez*, 98 Nev. 342, 647 P.2d 381 (1982).

13 The Nevada Supreme Court has held that “where two instruments were executed  
14 together as one transaction they constituted but one instrument or contract, although written on  
15 different pieces of paper.” *Haspray v. Pasarelli*, 79 Nev. 203, 207-208, 380 P.2d 919, (1963).

17 The *Haspray* Court went on to say:

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

22 *Id.*

23 As SUNRISE argues that the language in the stipulation identifying DUSLAK and  
24 SESMAN “as independent contractors” impacts RUSSO’s rights against DUSLAK and  
25 SESMAN, and as the Agreement states that “ANY LANGUAGE THAT WOULD BE READ  
26 TO IN ANY WAY IMPACT PLAINTIFF’S RIGHTS AGAINAST RICHARD DUSLAK  
27 and/or JUSTIN SESMAN . . . SHALL BE DEMED NULL AND VOID”, IT IS HEREBY  
28

1 ORDERED ADJUDGED AND DECREED that the language "as independent contractors" as  
2 found in the stipulation is deemed null and void pursuant to the plain language found on page 4  
3 of the settlement agreement.  
4

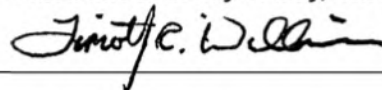
5 Paragraph 15 of the agreement, which is found on page 7 states:

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

11 As the language "as independent contractors" is deemed null and void, IT IS HEREBY  
12 ORDERED ADJUDGED AND DECREED that the words "as independent contractors" are  
13 severed and deleted from the Agreement as set forth in paragraph 15, and the remainder of the  
14 Agreement and stipulation, with the words "as independent contractors" deleted shall remain in  
15 full force and effect.

16 SO ORDERED.

17 Dated this 26th day of May, 2021

18 

19 ZJ

20 028 C04 6CB9 C18D  
21 Timothy C. Williams  
22 District Court Judge

23 Submitted by:  
24 LAW OFFICE OF DAVID SAMPSON, LLC.

25 BY: /s/ David Sampson

26 DAVID SAMPSON, ESQ.  
27 Nevada Bar No.6811  
28 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;

**Fwd: Russo**

2 messages

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

Fri, May 14, 2021 at 11:21 AM

To: Shannon Splaine <ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Amanda Nalder <amanda@davidsampsonlaw.com>, Julie Funai <JFunai@lipsonneilson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

On Tuesday I sent the proposed Order to all of you. On Wednesday I sent the proposed Order to you again after correcting two typographical errors. My Tuesday email asked you to please let me know if you have any proposed changes regarding the same.

Having heard nothing from any of you, I will be submitting the same to the Court.

Attached is yet another copy of the proposed Order.

Thank you,

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

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

Date: Tue, May 11, 2021 at 11:35 AM

Subject: Russo

To: Shannon Splaine <ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Julie Funai <JFunai@lipsonneilson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

Based on the May 3, 2021 Minute Order the Court and the comments from the Court at the hearing today, I have prepared the attached proposed Order on the matter. Please let me know if you have any proposed changes regarding the same.

Thank you,

--

**David Sampson, Esq.**

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

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

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

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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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**2 attachments**



**656. Order on Motion to Set Aside.pdf**  
230K



**656. Order on Motion to Set Aside.pdf**  
202K

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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: 5/26/2021

15 Michael Merritt

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18 Amanda Nalder .

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19 Chris Turtzo .

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23 Barbara Pederson

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24 David Clark

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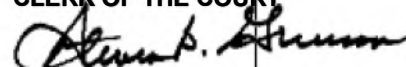
25 Debra Marquez

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Steven D. Grierson  
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1 **NOE**

2 DAVID F. SAMPSON, ESQ.,  
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5 630 S. 3<sup>rd</sup> 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*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

8 SIMONE RUSSO, )

9 Plaintiff, )

10 vs. )

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

11 COX COMMUNICATIONS LAS VEGAS, )  
12 INC., D/B/A COX COMMUNICATIONS, )  
13 IES RESIDENTIAL, INC., SUNRISE )  
14 VILLAS IX HOMEOWNERS )  
15 ASSOCIATION, J & G LAWN )  
16 MAINTENANCE, KEVIN BUSHBAKER, )  
17 PWJAMES MANAGEMENT & )  
18 CONSULTING, LLC., AND DOES I - V, )  
19 and ROE CORPORATIONS I - V, )  
inclusive, )

Defendants. )

**NOTICE OF ENTRY**

20 TO: All Defendants  
21 TO: Counsel for Defendants

22 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order Denying  
23 SUNRISE's Motion to Set Aside and/or Amend Judgment, and Order on Plaintiff's Motion to  
24 Enforce Settlement was entered in the above entitled matter on the 26<sup>th</sup> day of May, 2021.

25 ///

26 ///

1 a copy of which is attached hereto.

2 DATED THIS 26<sup>th</sup> day of May, 2021

3 LAW OFFICE OF DAVID SAMPSON, LLC.

4  
5 BY: /s/ *David Sampson*

6 DAVID SAMPSON, ESQ.

7 Nevada Bar No. 6811

8 LAW OFFICE OF DAVID SAMPSON

9 630 S. 3<sup>rd</sup> Street

10 Las Vegas, NV 89101

11 Tel: 702-605-1099

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14 *Attorney for Plaintiff*

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**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 26<sup>th</sup> day of May, 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

**ORD**

DAVID F. SAMPSON, ESQ.  
Nevada Bar No. 6811  
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Email: david@davidsampsonlaw.com  
*Attorney for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SIMONE RUSSO, )

Plaintiff, )

vs. )

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

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

**ORDER ON DEFENDANT'S MOTION  
TO SET ASIDE AND/OR AMEND  
JUDGMENT, AND ORDER ON  
PLAINTIFF'S MOTION TO ENFORCE  
SETTLEMENT**

Defendants. )  
\_\_\_\_\_ )

**ORDER ON DEFENDANT'S MOTION TO SET ASIDE AND/OR AMEND JUDGMENT  
AND ORDER ON PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT**

Defendant SUNRISE's motion to set aside and/or amend judgment and Plaintiff's motion to enforce settlement, having come on for hearing the 3<sup>rd</sup> day of March, 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 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.

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 due to the conduct of one of the venire members. Trial again commenced on October 10, 2019. The October 10, 2019 trial concluded on October 18, 2019 when the active parties advised the Court that a settlement had been reached in this action as to certain parties. The 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.

Counsel for the settling parties then discussed reducing the settlement to writing, whereupon counsel for the Plaintiff confirmed that in drafting any release or the like related to the settlement:

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

*Id* at P. 10 L. 24 – P. 11 L. 12.

The settling parties agreed that nothing in any of the settlement documents would affect any rights Plaintiff may have against DUSLAK and/or SESMAN.

At a subsequent hearing on November 7, 2019 counsel for SUNRISE asked that DUSLAK and SESMAN be included as releasees if it was determined they were employees of Defendants. Counsel for RUSSO stated that there was no agreement to release DUSLAK and/or SESMAN when the settlement was placed on the record on October 18, 2019. Counsel for RUSSO stated, “this idea that if they're employees, then Sesman and Duslak are out. That was not agreed to.” *See*, November 7, 2019 transcript at P. 23 L. 12-15. Counsel for RUSSO continued by noting that on October 18, 2019 “we put on the record -- we're not waiving, releasing, or otherwise affecting anything against Sesman or Duslak. I don't think anyone would dispute that . . . it was a pretty significant point that day.” *Id* at P. 25 L. 6-16.

The Court then asked SUNRISE’s counsel, “Mr. Fink, are we disputing that?” *Id* at P. 25 L. 21-22. Counsel for SUNRISE answered, “My best recollection is that when Mr. Sampson said he was specifically retaining his rights to go against Mr. Sesman and Mr. Duslak, we all agreed to that.” *Id* at P. 26 L. 2-5.

The Court then gave the settling parties an opportunity to reduce the terms of the settlement placed on the record on October 18, 2019 to writing. Counsel for RUSSO commented that, in reducing the settlement to writing, “along the lines of Sesman and Duslak, all rights against them, anybody who insures them, you know, all of those are preserved. They're not affected. I would like to make sure that is crystal clear in whatever iteration we end up with.” *Id* at P. 40 L. 16-22.

In reducing the terms of the settlement placed on the record on October 18, 2019 to writing, the agreement the settling parties signed stated that RUSSO was preserving all rights to proceed against DUSLAK and SESMAN, and that neither DUSLAK and/or SESMAN were being released even in the event they were subsequently deemed SUNRISE employees. The agreement stated that “PLAINTIFF”, “Dr. SIMONE RUSSO” was releasing SUNRISE **“EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN”**. *See*, Settlement Agreement at P. 1 (emphasis in original). Each of the Defendants included in the agreement were identified as including the Defendants’ respective employees, with the clear exception of

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SUNRISE. On page one of the agreement the parties are identified. Defendant IES RESIDENTIAL, INC., is identified as:

IES RESIDENTIAL, INC. (hereinafter "IES") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;

*Id.*

Defendant COX is identified as:

COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS (hereinafter "COX") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;

*Id.*

Defendant SUNRISE however is identified as:

SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter "SUNRISE") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, insurers (Community Association Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc., DSCM, Inc. and Armour Risk Management, Inc. - but only as it relates to SUNRISE), **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM, INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the stipulation attached in exhibit "A")**, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners;

*Id* (emphasis in original).

The word "employees" is not used in the description of SURNISE as a Defendant.

Additionally, on page 4 of the release, the description of the released parties includes all of



Defendants’ “employees ***EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN . .*** .”. *Id* at P. 4 (emphasis in original). When referencing the employees of any of the settling Defendants it was made more than clear that the term “employees” who were being released did not include DUSLAK or SESMAN as releasees.

The settlement agreement further stated, “PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN”. *Id* at P. 4. The settlement agreement further confirmed, “ANY LANGUAGE IN THIS RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF’S RIGHTS AGAINAST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE DEEMED NULL AND VOID.” *Id* (emphasis in original).

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

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

There is no record of any of the parties filing any opposition(s) to RUSSO’s Application for Judgement by Default. None of the Defendants in this matter appeared at the December 17, 2019 hearing on RUSSO’s Application for Judgment by Default, nor did any of the Defendants,

or any other parties or non-parties, contest RUSSO's Application for Judgment by Default. Following the hearing on RUSSO's Application for Judgment by Default, the Court entered final Judgment in favor of RUSSO and against DUSLAK and SESMAN in the amount of \$25,000,000.00 with interest accruing from the date of entry until paid in full. Notice of Entry of the said final Judgment was served on all parties to this matter on December 17, 2019.

There is no record of any motion being filed under NRCP 59 to alter or amend the Judgment within 28 days after service of written notice of entry of the said Judgment. Indeed, there is no record of any such motion being filed at any time in 2019 or in 2020. There is no record of any motion being filed under NRCP 60 for relief from the final Judgment in this matter within six months after the date of the proceeding or after the date of service of the written notice of entry of the duly entered December 17, 2019 Judgment. Indeed, there is no record of any such motion being filed at any time in 2019 or in 2020.

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

SUNRISE filed the instant motion to set aside and/or amend judgment on January 21, 2021. Non-Party QBE filed a joinder to the said motion then subsequently withdrew its joinder to the same.

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

Regarding SUNRISE's motion to set aside and/or amend the Judgment entered in this matter, NRCP 59(e) states "a motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment." SUNRISE's motion to set aside

and/or alter or amend the final Judgment in this matter was filed on January 21, 2021, which was over a year after Notice of Entry of Judgment was served on the parties in this matter. SUNRISE's motion to set aside or alter the Judgment was not filed within 28 days after Notice of Entry of Judgment was served as required under NRCP 59(e) and is therefore denied.

Additionally, the Court finds that, in light of the procedural history of the case, there are no grounds to amend or set aside the Judgment pursuant to NRCP 60(a). The Court finds that there are no clerical mistakes, oversights or omissions in the duly entered Judgment. The Court further finds that the final Judgment in this matter was entered exactly as sought in Plaintiff's Application for Default judgment, which was provided to the active parties in this matter and which none of the active parties contested. The Court therefore denies SUNRISE's request for relief under NRCP 60(a).

The Court further finds that SUNRISE failed to establish grounds pursuant to NRCP 60(b)(1)-(6) to amend or set aside the Default Judgment in this matter. The Court finds that relief is not warranted under NRCP 60(b)(1) as SUNRISE has not presented the Court with evidence of mistake, surprise, or excusable neglect that the Court in its discretion would find warranted any such relief. The Court further finds that relief is not warranted under NRCP 60(b)(2) as SUNRISE has not presented the Court with evidence of newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under NRCP 59(b) that would cause the Court to exercise its discretion to grant such relief. The Court also finds that relief is not warranted under NRCP 60(b)(3) as SUNRISE has not presented the Court with evidence of fraud, misrepresentation, or misconduct by any opposing party that would cause the Court to exercise its discretion to grant such relief.

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Additionally, under NRCP 60(c)(1),

A motion under Rule 60(b) must be made within a reasonable time-and for reasons (1), (2), and (3) no more than 6 months after the date of the proceeding or the date of service of written notice of entry of judgment or order, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

SUNRISE's motion to set aside and/or alter or amend the Judgment in this matter was filed on January 21, 2021, which was over one year after Notice of Entry of Judgment was served on the parties in this matter on December 17, 2019. SUNRISE did not file a request for relief under NRCP 60(b) (1), (2), or (3) within 6 months after Notice of Entry of Judgment was served as required under NRCP 60(c)(1). SUNRISE's requests for relief under NRCP 60(b) (1), (2), and/or (3) are therefore also denied as untimely.

The Court also finds SUNRISE is not entitled to relief under NRCP 60(b)(4). The provisions of NRCP 60(b)(4) concerning void judgments "is normally invoked in a case where the court entering the challenged judgment did not have jurisdiction over the parties." *Misty Management v. District Court*, 83 Nev. 180, 182, 426 P.2d 728, 729 (1967) (citing *LaPotin v. LaPotin* 75 Nev. 264, 339, P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372, P.2d 679 (1962)). Judgments are typically deemed "void" in cases where the court entering the challenged judgment was itself disqualified from acting, e.g., *Osman v. Cobb*, 77 Nev. 133, 360 P.2d 258 (1961), or did not have jurisdiction over the parties, e.g., *LaPotin v. LaPotin*, 75 Nev. 264, 339 P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372 P.2d 679 (1962), or did not have jurisdiction over the subject matter of the litigation. *Misty Management v. District Court*, 83 Nev. 180, 426 P.2d 728 (1967).

DUSLAK and SESMAN were residents of Clark County Nevada when the underlying incident occurred. DUSLAK and SESMAN were both served with this suit in Clark County Nevada. The Court has jurisdiction over DUSLAK and SESMAN as well as the subject matter

of this negligence action. SUNRISE's motion does not assert that there were any jurisdictional issues over the parties or the subject matter. SUNRISE did not present any evidence of any jurisdictional issues. Relief is therefore not warranted under NRCP 60(b)(4).

NRCP 60(b)(5) allows a court to grant relief from a judgment if the judgment has been satisfied, released, or discharged. As noted above, SUNRISE did not present evidence that the duly entered Default Judgment against DUSLAK and SESMAN was satisfied, released, or discharged. The record is replete with examples of RUSSO confirming, and SUNRISE and the other active Defendants agreeing, that the settlement did not affect RUSSO's rights against DUSLAK or SESMAN in any way, that the settlement did not include SUNRISE employees, that the settlement did not include DUSLAK or SESMAN as employees of any of the Defendants, and that the settlement agreement specifically and completely excluded DUSLAK and SESMAN as releasees in all respects. The record further confirms that SUNRISE agreed RUSSO "shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN". As the Judgment against DUSLAK and SESMAN was not satisfied, released, or discharged, relief is not warranted under NRCP 60(b)(5).

NRCP 60(b)(6) permits relief from a judgment for "any other reason that justifies relief". During the hearing on this matter counsel for RUSSO argued that a request for relief under NRCP 60(b)(6) must present grounds "other" than those enumerated elsewhere in NRCP 60(b). In response counsel for SUNRISE stated, "Mr. Sampson says that, well, that's going to mean something different than the grounds that might be discussed in (1), (2), (3), (4), or (b) (1) (2) (3) (4), but I don't know if there's any law that says that." *See* Transcript of March 3, 2021 hearing at P. 68 L. 25 – P. 69 L. 4. The Court finds that the plain language of NRCP 60(b)(6) which permits relief for "any other reason that justifies relief" requires that any relief sought

under NRCP 60(b)(6) be for grounds “other” than the grounds set forth elsewhere in NRCP 60(b)(1-5). SUNRISE has not presented any authority indicating a party may seek relief under NRCP 60(b)(6) for reasons enumerated elsewhere in NRCP 60(b)(1-5). Indeed such a reading would be contrary to the purposes of NRCP 60(b)(1-5) as well as NRCP 60(c)(1). As SUNRISE has not provided the Court with “any other reason” that would justify relief from the Judgment, SUNRISE’s request for relief under NRCP 60(b)(6) motion is denied.

SUNRISE’s motion requests relief under NRCP 60(d)(3). NRCP 60(d)(3) permits a court to set aside a judgment “for fraud upon the court.” As the Nevada Supreme Court held in *NC-DSH Inc. v. Garner*, 218 P.3d 853, 858, 125 Nev. 647, 654 (2009):

The problem lies in defining what constitutes "fraud upon the court." Obviously, it cannot mean any conduct of a party or lawyer of which the court disapproves; among other evils, such a formulation "would render meaningless the [time] limitation on motions under [Rule] 60(b)(3)." *Kupferman v. Consolidated Research Mfg. Corp.*, 459 F.2d 1072, 1078 (2d Cir. 1972) (Friendly, J.), cited with approval in *Occhiuto*, 97 Nev. at 146 n. 2, 625 P.2d at 570 n. 2, and *Murphy*, 103 Nev. at 186, 734 P.2d at 739.

*Id* at 858, 654.

The Court went on to state:

The most widely accepted definition, which we adopt, holds that the concept embrace[s] only that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases . . . and relief should be denied in the absence of such conduct.

*Id.*

For a judgment to be set aside for fraud on the court, “the moving party must show clear and convincing evidence establishing fraud. *U.S. v. Estate of Stonehill*, 660 F.3d 415, 443 (9<sup>th</sup> Cir. 2011) (as cited in *Hsu v. Ubs Fin. Servs.* 2014 U.S. Dist. LEXIS 29792 (2014)).

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The *Stonehill* Court went on to note:

Fraud on the court should, we believe, embrace only that species of fraud which does, or attempts to, defile the court itself. . . . [Movant] must demonstrate, by clear and convincing evidence, an effort . . . to prevent the judicial process from functioning in the usual manner. They must show more than perjury or nondisclosure of evidence, unless that perjury or nondisclosure was so fundamental that it undermined the workings of the adversary process itself.

*Id* at 444-445.

SUNRISE’s motion does not set forth any proof of wrongdoing by RUSSO, his counsel, or the Court, and certainly does not provide clear and convincing evidence of any fraud that would subvert the integrity of the Court itself. In its Reply filed February 25, 2021 SUNRISE expressly withdrew any intimation or accusation of RUSSO’s counsel committing any fraud or misconduct in securing the Default Judgment in this matter. *See* Reply at P. 5 footnote 5. For these reasons, any request for relief under NRCP 60(d)(2) is denied.

Based on the foregoing IT IS HEREBY ORDERED ADJUDGED AND DECREED that Defendant Sunrise Villa IX Homeowners Association’s Motion to Set Aside and/or Amend the Judgment in this matter be, and hereby is, DENIED.

Regarding RUSSO’s motion to enforce the settlement, under EDCR 7.50 an agreement between parties is effective if the same is entered in the minutes and/or is in writing subscribed by the party against whom the same shall be alleged or the party’s attorney. The agreement that was placed on the record on October 18, 2021, in which the active parties to this suit agreed: 1) that RUSSO’s rights against DUSLAK and/or SESMAN are not affected by the settlement; 2) that the settlement did not include DUSLAK and/or SESMAN; and 3) that nothing in any subsequent writing confirming the settlement agreement would affect any rights RUSSO may have against DUSLAK and/or SESMAN, is enforceable. RUSSO’s motion to enforce “requests

this Court enforce the settlement agreement confirmed on the record on October 18, 2019 and hold that the settlement did not affect SIMONE's rights against DUSLAK and/or SESMAN." *See* Motion at P. 8 L. 2-5. It is hereby ORDERED ADJUDGED AND DECREED that RUSSO's motion to enforce settlement is GRANTED. It is further ORDERED ADJUDGED AND DECREED that the settlement entered into in this matter between the active parties and PW JAMES did not affect any of RUSSO's rights against DUSLAK and/or SESMAN to any degree.

SUNRISE directs the Court to verbiage in the stipulation attached to the settlement agreement in which RUSSO and SUNRISE stipulated that for purposes of this litigation, in August 2016 DUSLAK and SESMAN were natural persons who were in the service of SUNRISE as independent contractors whom SUNRISE compensated and whom SUNRISE had the non-exclusive right to direct and control. *See*, SUNRISE's Consolidated Opposition to Plaintiff's Motions to Enforce Settlement and Reply to QBE's Motion to Enforce at P. 2 L. 12-27.

SUNRISE argues that the language "as independent contractors" found in the stipulation attached to the Agreement impacts RUSSO's rights against DUSLAK and/or SESMAN and releases DUSLAK and SESMAN if they are found to be employees of SUNRISE. SUNRISE's position is without merit as the plain language on page 4 of the settlement agreement states "PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN".

The settlement agreement also states on page 4, "ANY LANGUAGE IN THIS RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY



IMPACT PLAINTIFF’S RIGHTS AGAINAST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE DEEMED NULL AND VOID.” The stipulation attached to the settlement Agreement is referenced multiple times in the settlement Agreement itself and is incorporated into the Agreement. *See*, Bryan A. Garner, ed. (2001), *Black’s Law Dictionary* (2nd pocket ed.). St. Paul, MN: West Group. p. 341. ISBN 0-314-25791-8. Incorporation by reference is the act of including a second document within another document by only mentioning the second document. When a document is mentioned in a main document, the entire second document is made a part of the main document. *Id.* When a document is referenced in a contract, the referenced document becomes a part of the contract for all purposes. *Lincoln Welding Works, Inc. v. Ramirez*, 98 Nev. 342, 647 P.2d 381 (1982).

The Nevada Supreme Court has held that “where two instruments were executed together as one transaction they constituted but one instrument or contract, although written on different pieces of paper.” *Haspray v. Pasarelli*, 79 Nev. 203, 207-208, 380 P.2d 919, (1963).

The *Haspray* Court went on to say:

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

*Id.*

As SUNRISE argues that the language in the stipulation identifying DUSLAK and SESMAN “as independent contractors” impacts RUSSO’s rights against DUSLAK and SESMAN, and as the Agreement states that “ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF’S RIGHTS AGAINAST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE DEMED NULL AND VOID”, IT IS HEREBY

ORDERED ADJUDGED AND DECREED that the language “as independent contractors” as found in the stipulation is deemed null and void pursuant to the plain language found on page 4 of the settlement agreement.

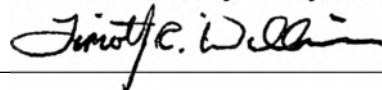
Paragraph 15 of the agreement, which is found on page 7 states:

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

As the language “as independent contractors” is deemed null and void, IT IS HEREBY ORDERED ADJUDGED AND DECREED that the words “as independent contractors” are severed and deleted from the Agreement as set forth in paragraph 15, and the remainder of the Agreement and stipulation, with the words “as independent contractors” deleted shall remain in full force and effect.

SO ORDERED.

Dated this 26th day of May, 2021



ZJ

028 C04 6CB9 C18D  
Timothy C. Williams  
District Court Judge

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;

**Fwd: Russo**

2 messages

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

Fri, May 14, 2021 at 11:21 AM

To: Shannon Splaine <ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Amanda Nalder <amanda@davidsampsonlaw.com>, Julie Funai <JFunai@lipsonneilson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

On Tuesday I sent the proposed Order to all of you. On Wednesday I sent the proposed Order to you again after correcting two typographical errors. My Tuesday email asked you to please let me know if you have any proposed changes regarding the same.

Having heard nothing from any of you, I will be submitting the same to the Court.

Attached is yet another copy of the proposed Order.

Thank you,

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

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

Date: Tue, May 11, 2021 at 11:35 AM

Subject: Russo

To: Shannon Splaine <ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Julie Funai <JFunai@lipsonneilson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

Based on the May 3, 2021 Minute Order the Court and the comments from the Court at the hearing today, I have prepared the attached proposed Order on the matter. Please let me know if you have any proposed changes regarding the same.

Thank you,

--

**David Sampson, Esq.**

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

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

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

630 S. 3rd St.

Las Vegas NV 89101

Phone: (702) 605-1099

Fax: (888) 209-4199

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

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

Thank you.

--

**David Sampson, Esq.**

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

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

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

630 S. 3rd St.  
Las Vegas NV 89101  
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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.

---

**2 attachments**



**656. Order on Motion to Set Aside.pdf**  
230K



**656. Order on Motion to Set Aside.pdf**  
202K

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1 **CSERV**

2  
3 DISTRICT COURT  
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: 5/26/2021

15 Michael Merritt

michael.merritt@mccormickbarstow.com

16 Tricia Dorner

tricia.dorner@mccormickbarstow.com

17 "David Sampson, Esq. " .

davidsampsonlaw@gmail.com

18 Amanda Nalder .

amanda@davidsampsonlaw.com

19 Chris Turtzo .

turtzo@morrisullivanlaw.com

20 Kristin Thomas .

kristin.thomas@mccormickbarstow.com

21 Michael R Merritt .

Michael.Merritt@mccormickbarstow.com

22 Shannon Splaine

ssplaine@lgclawoffice.com

23 Barbara Pederson

bpederson@lgclawoffice.com

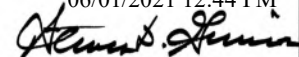
24 David Clark

dclark@lipsonneilson.com

25 Debra Marquez

dmarquez@lipsonneilson.com

1	Jonathan Pattillo	JPattillo@springelfink.com
2	Ramiro Morales	rmorales@mfrlegal.com
3	Susana Nutt	snutt@lipsonneilson.com
4	Philip John	philip.john@mccormickbarstow.com
5	Laura Lybarger	laura.lybarger@mccormickbarstow.com
6	MSL Mandatory Back-up Email	nvmorrissullivanlemkul@gmail.com
7	William Reeves	wreeves@mfrlegal.com
8	Mail Room	espringel@springelfink.com
9	Thomas Levine	tlevine@springelfink.com
10	Jennifer Arledge	jarledge@sgroandroger.com
11	E File	efile@sgroandroger.com
12	Amanda Nalder	phoeny27@gmail.com
13	David Sampson	davidsampsonlaw@gmail.com
14	Ginger Bellamy	gbellamy@lgclawoffice.com



CLERK OF THE COURT

**MOT**

**SHANNON G. SPLAINE, ESQ.**

Nevada Bar No. 8241

**LINCOLN, GUSTAFSON & CERCOS, LLP**

*ATTORNEYS AT LAW*

3960 Howard Hughes Parkway, Suite 200

Las Vegas, Nevada 89169

Telephone: (702) 257-1997

Facsimile: (702) 257-2203

ssplaine@lgclawoffice.com

Attorneys for 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  
MOTION TO RELEASE EXHIBITS FROM  
EVIDENCE VAULT ON ORDER  
SHORTENING TIME**

**HEARING REQUESTED**

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 this Motion to Release Exhibits From Evidence  
Vault.

///

///

///

This Motion is based on EDCR 7.28, the following memorandum of points and authorities, the pleadings and papers on file, and any other information this Court deems appropriate to consider.

DATED this 28<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

**ORDER SHORTENING TIME**

Having read and considered the Affidavit of Shannon G. Splaine, Esq. in Support of Order Shortening Time, and good cause appearing therefor, IT IS HEREBY ORDERED that the time for hearing on Defendant SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S *Motion to Release Exhibits from Evidence Vault* is hereby shortened.

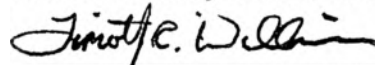
telephonically

Said Motion shall be heard in Department 16 on the 3rd day of June, 2021, at the hour of 9:05 a.m. / ~~p.m.~~ Blue Jeans dial-in information: 1-408-419-1715; Meeting ID

552 243 859#

**IT IS SO ORDERED** ~~this \_\_\_\_\_ day of May, 2021.~~

Dated this 1st day of June, 2021



DISTRICT COURT JUDGE

• LB

Submitted by:

**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

**8FB 66E D256 E279**  
**Timothy C. Williams**  
**District Court Judge**



**AFFIDAVIT OF SHANNON G. SPLAINE, ESQ. IN SUPPORT OF DEFENDANT SUNRISE  
VILLAS IX HOMEOWNERS ASSOCIATION'S MOTION TO RELEASE EXHIBITS  
FROM EVIDENCE VAULT ON ORDER SHORTENING TIME**

STATE OF NEVADA            )  
  )       ss  
COUNTY OF CLARK        )

I, Shannon G. Splaine, Esq., being first duly sworn, deposes, and says:

1. I am an attorney at law duly admitted to practice before the courts of the State of Nevada. I am a partner with LINCOLN, GUSTAFSON & CERCOS, LLP, attorneys of record for Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION. I know the following facts to be true of my own knowledge, and if called to testify, I could competently do so.

2. I make this Affidavit in support of Defendant Sunrise Villas IX Homeowners Association's *Motion To Release Exhibits From Evidence Vault*.

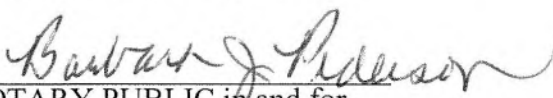
3. SUNRISE requests this Motion be heard on an Order Shortening Time in order to ensure the district court record is complete pursuant to NRAP 10 for purposes of any appeal and before this Court enters its order on the pending Motion to Set Aside and/or Amend Judgment filed by SUNRISE and the pending Motion to Enforce Settlement filed by Plaintiff.

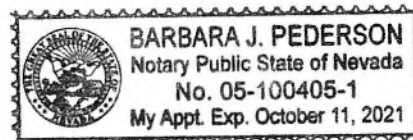
4. The shortening of time on this *Motion to Release Exhibits from Evidence Vault* will not prejudice any parties, as this is a matter of procedure.

5. Further Affiant sayeth naught.

  
SHANNON G. SPLAINE, ESQ.

Subscribed and sworn before me  
on this 28<sup>th</sup> day of May, 2021.

  
NOTARY PUBLIC in and for  
County of Clark, State of Nevada



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///

///

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

SUNRISE moves this Court for an order that releases from the Clerk's evidence vault exhibits presented at the December 17, 2019 default judgment hearing against defaulted defendants Richard Duslak and Justin Sesman. These exhibits are apparently in the custody of the evidence vault but were never filed into the district court record. The basis of the Default Judgment entered against Duslak and Sesman is in dispute, and the exhibits upon which the Court relied were not made part of the court record at the hearing when the \$25,000,000 default judgment was entered, or at any time thereafter. Sunrise has attempted to obtain copies of the exhibits from the clerk's office, without success. In order to submit a complete record on appeal, SUNRISE requests this Court order the release of the exhibits and worksheets from the evidence vault and order entry of the documents into the district court record.

**II. FACTUAL AND PROCEDURAL HISTORY**

On October 31, 2019, Plaintiff Simone Russo filed his *Application for Judgment by Default*. The *Application* requested a default judgment be entered against two defaulted defendants in the amount of \$25 million. On December 17, 2019, this Court heard Plaintiff's Application. The Court entered a \$25,000,000 default judgment in favor of Plaintiff Russo. The Minutes from the default judgment hearing reflect in full as follows:

**A-17-753606-C**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**December 17, 2019**

A-17-753606-C

Simone Russo, Plaintiff(s)

vs.

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

**December 17, 2019**

**09:00 AM**

**Plaintiff's Application for Judgment by Default**

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

**COURTROOM:** RJC Courtroom 03H

**COURT CLERK:** Darling, Christopher

**RECORDER:**

**REPORTER:** Isom, Peggy

**PARTIES PRESENT:**

David F. Sampson

Attorney for Plaintiff

**JOURNAL ENTRIES**

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

1 *See also, Exhibit 1, Minutes of 12/17/2019 Motion for Default Judgment.*

2 As set forth in the Minutes, exhibits were presented to the Court. The Minutes further reflect  
3 that “worksheets” were prepared, but the Minutes do not describe what the worksheets are or what  
4 they contain. Despite presentation of these exhibits to the court clerk, and apparent consideration of  
5 the exhibits by the Court in entering the \$25 million default judgment, the exhibits were not made part  
6 of the record. Similarly, although the minutes reflect the presence of a court reporter, Peggy Ipsom,  
7 the court reporter did not actually report the hearing (as she informed the undersigned defense counsel  
8 Splaine), and she therefore cannot prepare a transcript. Further, the Court does not use a JAVS system.  
9 In the absence of a JAVS record or reporting by the court reporter, it is impossible to obtain a transcript  
10 of the proceedings. Also, the Court’s judgment itself, which was prepared by Plaintiff’s counsel, does  
11 not describe any testimony, any exhibits, or any arguments of Plaintiff’s counsel, on which the Court  
12 relied in awarding the \$25 million judgment. *See Exhibit 2, email correspondence from Shannon*  
13 *Splaine, Esq. to Peggy Ipsom, court reporter, dated 5/17/2021.*

14 A review of the record related to the default prove up hearing does not identify what nine  
15 exhibits were presented to the court. It is counsel’s understanding that the presented exhibits were  
16 “processed” with the Evidence Vault after the hearing, and may be “non-public filings.” There is  
17 nothing in the record to explain why the exhibits that were presented were not made part of the formal  
18 record of the proceeding. Counsel has attempted to contact the Court Records department to determine  
19 how to obtain the presented exhibits from the vault without success. To ensure the record is complete  
20 for appeal purposes, the presented exhibits need to be part of the official court record. This motion  
21 follows.

### 22 **III. LEGAL AUTHORITY AND ANALYSIS**

23 Rule 7.28 of the Eighth Judicial District Court Rules provides that the clerk of the court  
24 maintains custody of the records and papers of the court. EDCR 7.28(a). The purpose of this custody  
25 is to ensure a complete record on appeal. *See* NRAP 10(a). The record on appeal consists of exhibits  
26 filed with the district court, including docket entries made by the district court clerk, such as the  
27 reference to the exhibits and “worksheets” in this case. *Id.*

28 ///

1 Here, the Court held a hearing on Plaintiff's *Application for Default Judgment* that requested  
2 \$25 million in damages. The purpose of a prove-up hearing is to, "(a) conduct an accounting, (b)  
3 determine the amount of damages, (c) establish the truth of any allegations by evidence, or (d)  
4 investigate any other matter." NRCp 55(b). Similarly, an application for default judgment must  
5 include an affidavit supporting the amount of damages requested "and avoid mere general conclusions  
6 or arguments." EDCR 2.70.

7 In this case, Plaintiff's *Application for Default Judgment* includes an affidavit that consists  
8 only of one page and a conclusory statement that Plaintiff's medical expenses are \$592,846.46 and his  
9 remaining damages are \$25 million. *See App. Default Judgm. filed 10/31/16*. The Application  
10 references two exhibits, 101 and 119 as it relates to the alleged past and future medical expenses.  
11 However, these were not attached to the Application. It appears that these two exhibits may be those  
12 identified by Plaintiff in his Pre Trial Memorandum, filed on September 6, 2019, but it is unclear as  
13 they were not attached nor referenced in that manner.

14 It is unknown what exhibits were presented by Plaintiff at the hearing as referenced in the  
15 Minute Order. The exhibits presented to and likely considered by this Court during the prove-up  
16 hearing are not part of the district court record. Similarly, the "worksheets" prepared by the court  
17 clerk are not part of the district court record. There is no indication in the record that the exhibits and  
18 "worksheets" are in any way privileged or sealed, as such is not reflected in the Court Minutes. *See*  
19 *Exh. 1*. There is also no explanation why the documents are not part of the district court record.

20 Because these exhibits and "worksheets" appear to have been erroneously excluded from the  
21 district court record, SUNRISE requests this Court to order the release of these records from the  
22 Evidence Vault, and to order the records to be made part of the record in this case. Such a request is  
23 essential for a complete record on appeal. NRAP 10.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **VI. CONCLUSION**

2 For reasons set forth herein, SUNRISE respectfully requests this Court to order the release of  
3 all exhibits and “worksheets” from the December 17, 2019 prove-up hearing on Plaintiff’s *Application*  
4 *for Default Judgment*, and to make the same part of the file-stamped record in this case.

5 DATED this 28<sup>th</sup> day of May, 2021.

6 **LINCOLN, GUSTAFSON & CERCOS, LLP**

7 */s/ Shannon G. Splaine*

8 **SHANNON G. SPLAINE, ESQ.**

9 Nevada Bar No. 8241

3960 Howard Hughes Parkway, Suite 200

10 Las Vegas, Nevada 89169

11 Attorneys for Defendant, SUNRISE VILLAS IX  
HOMEOWNERS ASSOCIATION

12 **DECLARATION IN SUPPORT OF MOTION TO RELEASE**  
13 **EXHIBITS FROM EVIDENCE VAULT**

14 I, SHANNON G. SPLAINE, declare as follows:

- 15 1. I am an attorney with LINCOLN, GUSTAFSON & CERCOS, LLP and counsel of  
16 record for SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION.
- 17 2. The factual information contained herein is true and correct based on my own  
18 personal knowledge, and for the facts stated on information and belief, I believe the same to be true.
- 19 3. Attached as *Exhibit 1* is a true and correct copy of the Minutes from the December  
20 17, 2019 prove-up hearing on Plaintiff Russo’s *Application for Default Judgment*.
- 21 4. Attached as *Exhibit 2* is a true and correct copy of email correspondence from myself  
22 to Peggy Ipsom, court reporter, dated 5/17/2021.

23 I declare that the foregoing is true and correct based on my own personal knowledge. I  
24 execute this Declaration in Clark County, Nevada, on the date specified below.

25 Dated this 28<sup>th</sup> day of May, 2021.

26 */s/ Shannon G. Splaine*

27 **SHANNON G. SPLAINE, ESQ.**

# Exhibit 1



A-17-753606-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Negligence - Premises Liability****COURT MINUTES****December 17, 2019**

---

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

---

**December 17, 2019      09:00 AM      Plaintiff's Application for Judgment by Default**

**HEARD BY:** Williams, Timothy C.      **COURTROOM:** RJC Courtroom 03H

**COURT CLERK:** Darling, Christopher

**RECORDER:**

**REPORTER:** Isom, Peggy

**PARTIES PRESENT:**

**David F. Sampson**

**Attorney for Plaintiff**

**JOURNAL ENTRIES**

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

# Exhibit 2



**Barbara Pederson**

---

**From:** Shannon Splaine  
**Sent:** Friday, May 28, 2021 11:57 AM  
**To:** Barbara Pederson  
**Subject:** FW: Russo v Cox et all A -17-753606-C

**Shannon G. Splaine, Esq.**  
**LINCOLN, GUSTAFSON & CERCOS LLP**  
**Experience. Integrity. Results.**

California Nevada Arizona

550 West C Street, Suite 1400  
 San Diego, California 92101  
 619.233.1150; 619.233.6949 Fax

3960 Howard Hughes Parkway, Suite 200  
 Las Vegas, Nevada 89169  
 702.257.1997; 702.257.2203 Fax

2415 E. Camelback Rd., Suite 700  
 Phoenix, Arizona 85016  
 602.606.5735; 602.508.6099 Fax

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

The information contained in the text (and attachments) of this e-mail is privileged, confidential and only intended for the addressee(s). Nothing in this email or attachments is intended as tax advice and must not be relied upon in that regard. Please consult your tax advisors.

**From:** Peggy Isom  
**Sent:** Monday, May 17, 2021 2:42 PM  
**To:** Shannon Splaine <ssplaine@lgclawoffice.com>  
**Subject:** Re: Russo v Cox et all A -17-753606-C

We don't use JAVs to record in Dept 16.

*Peggy Isom, RMR CRR #541*  
*702-671-4402*  
*Official Court Reporter to the*  
*Honorable Timothy C. Williams*  
*Clark County District Court*  
*Department-XVI*

On Mon, May 17, 2021 at 1:02 PM Shannon Splaine <ssplaine@lgclawoffice.com> wrote:

Peggy;

Do you have a recording (even if not transcribed) from the December 17, 2019 hearing in the above matter. It was the prove up hearing.

Thanks

**Shannon G. Splaine, Esq.**

**LINCOLN, GUSTAFSON & CERCOS LLP**

**Experience. Integrity. Results.**

**California   Nevada   Arizona**

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The information contained in the text (and attachments) of this e-mail is privileged, confidential and only intended for the addressee(s). Nothing in this email or attachments is intended as tax advice and must not be relied upon in that regard. Please consult your tax advisors.

1 **CSERV**

2  
3 DISTRICT COURT  
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 Motion to Release 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: 6/1/2021

15 Michael Merritt

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tricia.dorner@mccormickbarstow.com

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davidsampsonlaw@gmail.com

18 Amanda Nalder .

amanda@davidsampsonlaw.com

19 Chris Turtzo .

turtzo@morrisullivanlaw.com

20 Kristin Thomas .

kristin.thomas@mccormickbarstow.com

21 Michael R Merritt .

Michael.Merritt@mccormickbarstow.com

22 Barbara Pederson

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23 Shannon Splaine

ssplaine@lgclawoffice.com

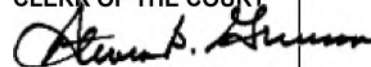
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25 Jonathan Pattillo

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10	Jennifer Arledge	jarledge@sgroandroger.com
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12	Amanda Nalder	phoeny27@gmail.com
13	David Sampson	davidsampsonlaw@gmail.com
14	Ginger Bellamy	gbellamy@lgclawoffice.com



RPLY  
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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
Plaintiff,	)	Dept: XVI
vs.	)	REPLY TO OPPOSITION TO MOTION TO
COX COMMUNICATIONS LAS VEGAS,	)	AMEND AND/OR MODIFY ORDER
INC., et al.	)	DATE: June 10, 2021
Defendants.	)	TIME: 9:05 a.m.

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

Proposed Intervenor QBE Insurance Corporation ("QBE") hereby submits the following  
Reply to the Opposition filed by Plaintiff Simone Russo to QBE's Motion to Intervene to Enforce  
Settlement ("Motion"):

Discussion

Procedurally, QBE was forced to file the Motion after counsel for the Plaintiff  
surreptitiously submitted his proposed Order to this Court while failing to acknowledge that he had  
does so. Counsel's motivation in proceeding in this manner is simple and straight forward - deceive  
counsel into believing that no Order had been submitted and mislead this Court into believing that  
no competing Order would be submitted.

Apparently believing the best defense is a good offense, Plaintiff has responded to the  
Motion by accusing QBE of somehow misleading this Court by seeking to meet and confer with  
counsel regarding the order. Suffice it to say that counsel's sharp practices and lack of candor are

1 disappointing and unfortunate.

2 Substantively, the draft Order that Plaintiff submitted includes gratuitous provisions not  
3 reached by this Court in connection with the adjudication of the Motion. Compare Exhibit D with  
4 Exhibit G. As this Court is aware, the Motion was denied based solely on procedural grounds. See  
5 Exhibit A. Given that the version of the Order Plaintiff submitted includes substantive provisions  
6 not reached by this Court in connection with the Motion, it is respectfully submitted that the Motion  
7 be granted and QBE's version of the Order be entered.<sup>1</sup>

8 Dated: June 1, 2021

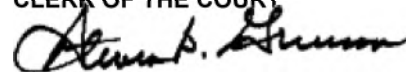
MORALES FIERRO & REEVES

9  
10  
11 By: /s/ William C. Reeves  
12 William C. Reeves  
13 600 S. Tonopah Dr., Suite 300  
14 Las Vegas, NV 89106  
15 Attorneys for QBE  
16  
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27 <sup>1</sup> As has been true in connection with other matters pending before this Court, counsel for Plaintiff again improperly  
28 filed an untimely supplemental brief following the submission of his Opposition. Request is made that this Court strike  
the brief and admonish counsel for failing to comply with Local Rules.



Electronically Filed  
6/2/2021 10:15 AM  
Steven D. Grierson  
CLERK OF THE COURT


**OPP**

DAVID F. SAMPSON, ESQ.  
Nevada Bar No. 6811  
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Email: david@davidsampsonlaw.com  
*Attorney for Plaintiff*  
SIMONE RUSSO

**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 &amp; G LAWN )

MAINTENANCE, KEVIN BUSHBAKER, )

PWJAMES MANAGEMENT &amp; )

CONSULTING, LLC., J. CHRIS )

SCARCELLI, DOE LANDSCAPER, )

RICHARD DUSLAK, JUSTIN SESMAN, )

AND DOES I-V, and ROE )

CORPORATIONS I-V, inclusive, )

Defendants. )

OPPOSITION TO MOTION TO  
RELEASE EXHIBITS FROM  
EVIDENCE VAULT ON OST

DATE OF HEARING: 6/3/2021  
TIME OF HEARING: 9:05 A.M.

**OPPOSITION TO SUNRISE'S MOTION TO RELEASE EXHIBITS FROM  
EVIDENCE VAULT ON ORDER SHORTENING TIME**

Plaintiff, SIMONE RUSSO, hereby opposes SUNRISE's motion to release exhibits from evidence vault. This opposition is made and based upon the pleadings and papers on file herein,



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

### **MEMORANDUM OF POINTS AND AUTHORITIES**

The Court is abundantly familiar with the facts of this matter and the same will not be reiterated herein. The Court issued a minute Order DENYING SUNRISE's motion to alter/amend or set aside the Judgment in this matter, and GRANTING RUSSO's motion to enforce settlement on May 3, 2021. *See*, Exhibit "1". Notice of Entry of the Order on the said motions was entered May 26, 2021. *See*, Exhibit "2". Twenty-five days *after* the Court ruled on the said motions, and two days *after* the Notice of Entry of the Court's Order was served on the parties in this matter, SUNRISE filed the instant motion to release exhibits from evidence vault.

Even though SUNRISE's motion to release exhibits from evidence vault was filed twenty-five days *after* the Court ruled on the motions, and two days *after* Notice of Entry was served on the parties, SUNRISE's motion claims:

SUNRISE requests this motion be heard on an Order Shortening Time in order to ensure the district court is complete pursuant to NRAP 10 for purposes of any appeal and before this Court enters its order on the pending Motion to Set Aside and/or Amend Judgment filed by SUNRISE and the pending Motion to Enforce Settlement filed by Plaintiff.

*See*, SUNRISE's motion at P. 3 L. 12-15.

SUNRISE's assertion that is seeking to release exhibits from the evidence vault "for purposes of any appeal and before this Court enters its order on the pending Motion to Set Aside and/or Amend Judgment filed by SUNRISE and the pending Motion to Enforce Settlement filed by Plaintiff" is at best disingenuous as the motion was filed twenty-five days *after* the Court ruled on the said motions, and two days *after* Notice of Entry of the said Order was served on

the parties. Thus *as of the May 28, 2021 filing of SUNRISE's motion, the Motion to Set Aside and/or Amend Judgment filed by SUNRISE and the Motion to Enforce Settlement filed by Plaintiff were not "pending"*. It is unclear why counsel for SUNRISE would sign an affidavit asserting that the instant motion needs to be heard on an order shortening time because certain motions are "pending", when the motions were not "pending" when counsel signed the affidavit.

The Court has ruled on the motions by SUNRISE, and the motion by Plaintiff SIMONE RUSSO. Any appeal would be limited to issues addressed with the District Court. *See, Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n. 3, 252 P.3d 668, 672 n. 3 (2011) ("Issues raised for the first time in an appellant's opening brief are deemed waived."). As SUNRISE did not seek to release any evidence from the vault prior to the Court ruling on the motions by SUNRISE and SIMONE, there is no justification for releasing any evidence from the vault at the present time. Certainly SUNRISE will not be permitted to utilize any such evidence in appealing the Court's Order as SUNRISE is not permitted to make new arguments or present new evidence for the first time on appeal. *Id.*

As SUNRISE's requests that evidence be released from the vault "before" the Court enters its order on the Motion to Set Aside and/or Amend Judgment filed by SUNRISE and the Motion to Enforce Settlement filed by SIMONE, and as SUNRISE's motion was filed well *after* the Court entered its order on the said motions, it certainly appears SUNRISE is seeking to have the evidence released under false pretenses. It is very concerning that SUNRISE is seeking to release evidence from the vault under false pretenses as additional evidence (set forth below) indicates *SUNRISE has made multiple misrepresentations to the Court in this matter.*

As the Court surely recalls, SUNRISE's Motion to Alter and/or Amend the Judgment was premised in large part by SUNRISE's assertion that SIMONE somehow agreed to release DUSLAK and/or SESMAN in October and November of 2019 when the settlement with SUNRISE was completed. The Court recognized that evidence from the transcripts of hearings in October and November 2019, as well as the settlement agreement, clearly indicated SIMONE did not agree to release DUSLAK and/or SESMAN in any manner. SIMONE had assumed that SUNRISE, in pursuing its Motion to Alter and/or Amend the Judgment, had adopted an odd interpretation of the clear evidence in this matter. The truth however, as recently revealed in disclosures in the Federal Action, proves *SUNRISE understood all along that SIMONE never agreed to release DUSLAK and/or SESMAN as SUNRISE employees*, yet asserted the exact opposite to the Court knowing SUNRISE's assertions were false.

Exhibit "3" is an email from Leonard Fink, Esq., counsel for SUNRISE, which was copied to Ramie Morales, Esq., who is a partner with William Reeves, Esq., counsel for QBE. In the email, dated November 7, 2019, Mr. Fink states "Although counsel [for SIMONE] admitted he thought that Suslak (sic) and Desman (sic) were independent contractors and not employees, *he still would not agree to dismissing them if the court later found out that they are*". *Id* (emphasis added). Even though counsel for SUNRISE made it clear in an email from November 7, 2019 that he completely understood that SIMONE "would not agree to dismissing [Duslak and Sesman] if the court later found out that they are [employees]", SUNRISE still asserted to this Court that SIMONE somehow agreed to dismiss DUSLAK and SESMAN as SUNRISE employees.

Just as SUNRISE's blatant misrepresentation to the Court as noted above cannot be ignored, SUNRISE's current misrepresentation that it needs the exhibits released from the vault

“before” the Court rules on “pending” motion which were not pending, and had not been pending for days before SUNRISE filed the instant motion, cannot be ignored. As SUNRISE is misrepresenting its motives for the seeking the release of the exhibits, and as SUNRISE cannot present a justifiable purpose in seeking the release of the exhibits, the Court should deny SUNRISE’s motion.

**CONCLUSION**

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

DATED this 2<sup>nd</sup> day of June, 2021

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ David Sampson

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

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

Las Vegas NV 89101

Fax No: 888-209-4199

Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, LLC., and that on this 2<sup>nd</sup> day of June, 2021, I served a copy of the foregoing **OPPOSITION** on all the remaining parties in this matter via the court's electronic online filing system and as follows:

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

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

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

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

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

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

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

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

## **EXHIBIT “1”**

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.

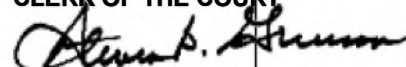
Counsel for Plaintiff Russo shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections,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



**EXHIBIT “2”**

Electronically Filed  
5/26/2021 7:28 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 **NOE**

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

8 SIMONE RUSSO, )

9 Plaintiff, )

10 vs. )

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

11 COX COMMUNICATIONS LAS VEGAS, )  
12 INC., D/B/A COX COMMUNICATIONS, )  
13 IES RESIDENTIAL, INC., SUNRISE )  
14 VILLAS IX HOMEOWNERS )  
15 ASSOCIATION, J & G LAWN )  
16 MAINTENANCE, KEVIN BUSHBAKER, )  
17 PWJAMES MANAGEMENT & )  
18 CONSULTING, LLC., AND DOES I - V, )  
19 and ROE CORPORATIONS I - V, )  
inclusive, )

Defendants. )

**NOTICE OF ENTRY**

20 TO: All Defendants  
21 TO: Counsel for Defendants

22 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order Denying  
23 SUNRISE's Motion to Set Aside and/or Amend Judgment, and Order on Plaintiff's Motion to  
24 Enforce Settlement was entered in the above entitled matter on the 26<sup>th</sup> day of May, 2021.

25 ///

26 ///

1 a copy of which is attached hereto.

2 DATED THIS 26<sup>th</sup> day of May, 2021

3 LAW OFFICE OF DAVID SAMPSON, LLC.

4  
5 BY: /s/ *David Sampson*

6 DAVID SAMPSON, ESQ.

7 Nevada Bar No. 6811

8 LAW OFFICE OF DAVID SAMPSON

9 630 S. 3<sup>rd</sup> Street

10 Las Vegas, NV 89101

11 Tel: 702-605-1099

12 Fax: 888-209-4199

13 Email: david@davidsampsonlaw.com

14 *Attorney for Plaintiff*

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**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 26<sup>th</sup> day of May, 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

**ORD**

DAVID F. SAMPSON, ESQ.  
Nevada Bar No. 6811  
LAW OFFICE OF DAVID SAMPSON, LLC.  
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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 DEFENDANT'S MOTION  
TO SET ASIDE AND/OR AMEND  
JUDGMENT, AND ORDER ON  
PLAINTIFF'S MOTION TO ENFORCE  
SETTLEMENT**

Defendants. )  
\_\_\_\_\_ )

**ORDER ON DEFENDANT'S MOTION TO SET ASIDE AND/OR AMEND JUDGMENT  
AND ORDER ON PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT**

Defendant SUNRISE's motion to set aside and/or amend judgment and Plaintiff's motion to enforce settlement, having come on for hearing the 3<sup>rd</sup> day of March, 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 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.

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 due to the conduct of one of the venire members. Trial again commenced on October 10, 2019. The October 10, 2019 trial concluded on October 18, 2019 when the active parties advised the Court that a settlement had been reached in this action as to certain parties. The 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.

Counsel for the settling parties then discussed reducing the settlement to writing, whereupon counsel for the Plaintiff confirmed that in drafting any release or the like related to the settlement:

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

*Id* at P. 10 L. 24 – P. 11 L. 12.

The settling parties agreed that nothing in any of the settlement documents would affect any rights Plaintiff may have against DUSLAK and/or SESMAN.

At a subsequent hearing on November 7, 2019 counsel for SUNRISE asked that DUSLAK and SESMAN be included as releasees if it was determined they were employees of Defendants. Counsel for RUSSO stated that there was no agreement to release DUSLAK and/or SESMAN when the settlement was placed on the record on October 18, 2019. Counsel for RUSSO stated, “this idea that if they're employees, then Sesman and Duslak are out. That was not agreed to.” *See*, November 7, 2019 transcript at P. 23 L. 12-15. Counsel for RUSSO continued by noting that on October 18, 2019 “we put on the record -- we're not waiving, releasing, or otherwise affecting anything against Sesman or Duslak. I don't think anyone would dispute that . . . it was a pretty significant point that day.” *Id* at P. 25 L. 6-16.

The Court then asked SUNRISE’s counsel, “Mr. Fink, are we disputing that?” *Id* at P. 25 L. 21-22. Counsel for SUNRISE answered, “My best recollection is that when Mr. Sampson said he was specifically retaining his rights to go against Mr. Sesman and Mr. Duslak, we all agreed to that.” *Id* at P. 26 L. 2-5.

The Court then gave the settling parties an opportunity to reduce the terms of the settlement placed on the record on October 18, 2019 to writing. Counsel for RUSSO commented that, in reducing the settlement to writing, “along the lines of Sesman and Duslak, all rights against them, anybody who insures them, you know, all of those are preserved. They're not affected. I would like to make sure that is crystal clear in whatever iteration we end up with.” *Id* at P. 40 L. 16-22.

In reducing the terms of the settlement placed on the record on October 18, 2019 to writing, the agreement the settling parties signed stated that RUSSO was preserving all rights to proceed against DUSLAK and SESMAN, and that neither DUSLAK and/or SESMAN were being released even in the event they were subsequently deemed SUNRISE employees. The agreement stated that “PLAINTIFF”, “Dr. SIMONE RUSSO” was releasing SUNRISE **“EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN”**. *See*, Settlement Agreement at P. 1 (emphasis in original). Each of the Defendants included in the agreement were identified as including the Defendants’ respective employees, with the clear exception of

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SUNRISE. On page one of the agreement the parties are identified. Defendant IES RESIDENTIAL, INC., is identified as:

IES RESIDENTIAL, INC. (hereinafter "IES") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;

*Id.*

Defendant COX is identified as:

COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS (hereinafter "COX") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;

*Id.*

Defendant SUNRISE however is identified as:

SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter "SUNRISE") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, insurers (Community Association Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc., DSCM, Inc. and Armour Risk Management, Inc. - but only as it relates to SUNRISE), **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM, INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the stipulation attached in exhibit "A")**, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners;

*Id* (emphasis in original).

The word "employees" is not used in the description of SURNISE as a Defendant.

Additionally, on page 4 of the release, the description of the released parties includes all of

Defendants’ “employees ***EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN . .*** .”. *Id* at P. 4 (emphasis in original). When referencing the employees of any of the settling Defendants it was made more than clear that the term “employees” who were being released did not include DUSLAK or SESMAN as releasees.

The settlement agreement further stated, “PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN”. *Id* at P. 4. The settlement agreement further confirmed, “ANY LANGUAGE IN THIS RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF’S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE DEEMED NULL AND VOID.” *Id* (emphasis in original).

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

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

There is no record of any of the parties filing any opposition(s) to RUSSO’s Application for Judgement by Default. None of the Defendants in this matter appeared at the December 17, 2019 hearing on RUSSO’s Application for Judgment by Default, nor did any of the Defendants,

or any other parties or non-parties, contest RUSSO's Application for Judgment by Default. Following the hearing on RUSSO's Application for Judgment by Default, the Court entered final Judgment in favor of RUSSO and against DUSLAK and SESMAN in the amount of \$25,000,000.00 with interest accruing from the date of entry until paid in full. Notice of Entry of the said final Judgment was served on all parties to this matter on December 17, 2019.

There is no record of any motion being filed under NRCP 59 to alter or amend the Judgment within 28 days after service of written notice of entry of the said Judgment. Indeed, there is no record of any such motion being filed at any time in 2019 or in 2020. There is no record of any motion being filed under NRCP 60 for relief from the final Judgment in this matter within six months after the date of the proceeding or after the date of service of the written notice of entry of the duly entered December 17, 2019 Judgment. Indeed, there is no record of any such motion being filed at any time in 2019 or in 2020.

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

SUNRISE filed the instant motion to set aside and/or amend judgment on January 21, 2021. Non-Party QBE filed a joinder to the said motion then subsequently withdrew its joinder to the same.

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

Regarding SUNRISE's motion to set aside and/or amend the Judgment entered in this matter, NRCP 59(e) states "a motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment." SUNRISE's motion to set aside

and/or alter or amend the final Judgment in this matter was filed on January 21, 2021, which was over a year after Notice of Entry of Judgment was served on the parties in this matter. SUNRISE's motion to set aside or alter the Judgment was not filed within 28 days after Notice of Entry of Judgment was served as required under NRCP 59(e) and is therefore denied.

Additionally, the Court finds that, in light of the procedural history of the case, there are no grounds to amend or set aside the Judgment pursuant to NRCP 60(a). The Court finds that there are no clerical mistakes, oversights or omissions in the duly entered Judgment. The Court further finds that the final Judgment in this matter was entered exactly as sought in Plaintiff's Application for Default judgment, which was provided to the active parties in this matter and which none of the active parties contested. The Court therefore denies SUNRISE's request for relief under NRCP 60(a).

The Court further finds that SUNRISE failed to establish grounds pursuant to NRCP 60(b)(1)-(6) to amend or set aside the Default Judgment in this matter. The Court finds that relief is not warranted under NRCP 60(b)(1) as SUNRISE has not presented the Court with evidence of mistake, surprise, or excusable neglect that the Court in its discretion would find warranted any such relief. The Court further finds that relief is not warranted under NRCP 60(b)(2) as SUNRISE has not presented the Court with evidence of newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under NRCP 59(b) that would cause the Court to exercise its discretion to grant such relief. The Court also finds that relief is not warranted under NRCP 60(b)(3) as SUNRISE has not presented the Court with evidence of fraud, misrepresentation, or misconduct by any opposing party that would cause the Court to exercise its discretion to grant such relief.

///

Additionally, under NRCP 60(c)(1),

A motion under Rule 60(b) must be made within a reasonable time-and for reasons (1), (2), and (3) no more than 6 months after the date of the proceeding or the date of service of written notice of entry of judgment or order, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

SUNRISE's motion to set aside and/or alter or amend the Judgment in this matter was filed on January 21, 2021, which was over one year after Notice of Entry of Judgment was served on the parties in this matter on December 17, 2019. SUNRISE did not file a request for relief under NRCP 60(b) (1), (2), or (3) within 6 months after Notice of Entry of Judgment was served as required under NRCP 60(c)(1). SUNRISE's requests for relief under NRCP 60(b) (1), (2), and/or (3) are therefore also denied as untimely.

The Court also finds SUNRISE is not entitled to relief under NRCP 60(b)(4). The provisions of NRCP 60(b)(4) concerning void judgments "is normally invoked in a case where the court entering the challenged judgment did not have jurisdiction over the parties." *Misty Management v. District Court*, 83 Nev. 180, 182, 426 P.2d 728, 729 (1967) (citing *LaPotin v. LaPotin* 75 Nev. 264, 339, P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372, P.2d 679 (1962)). Judgments are typically deemed "void" in cases where the court entering the challenged judgment was itself disqualified from acting, e.g., *Osman v. Cobb*, 77 Nev. 133, 360 P.2d 258 (1961), or did not have jurisdiction over the parties, e.g., *LaPotin v. LaPotin*, 75 Nev. 264, 339 P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372 P.2d 679 (1962), or did not have jurisdiction over the subject matter of the litigation. *Misty Management v. District Court*, 83 Nev. 180, 426 P.2d 728 (1967).

DUSLAK and SESMAN were residents of Clark County Nevada when the underlying incident occurred. DUSLAK and SESMAN were both served with this suit in Clark County Nevada. The Court has jurisdiction over DUSLAK and SESMAN as well as the subject matter

of this negligence action. SUNRISE's motion does not assert that there were any jurisdictional issues over the parties or the subject matter. SUNRISE did not present any evidence of any jurisdictional issues. Relief is therefore not warranted under NRCP 60(b)(4).

NRCP 60(b)(5) allows a court to grant relief from a judgment if the judgment has been satisfied, released, or discharged. As noted above, SUNRISE did not present evidence that the duly entered Default Judgment against DUSLAK and SESMAN was satisfied, released, or discharged. The record is replete with examples of RUSSO confirming, and SUNRISE and the other active Defendants agreeing, that the settlement did not affect RUSSO's rights against DUSLAK or SESMAN in any way, that the settlement did not include SUNRISE employees, that the settlement did not include DUSLAK or SESMAN as employees of any of the Defendants, and that the settlement agreement specifically and completely excluded DUSLAK and SESMAN as releasees in all respects. The record further confirms that SUNRISE agreed RUSSO "shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN". As the Judgment against DUSLAK and SESMAN was not satisfied, released, or discharged, relief is not warranted under NRCP 60(b)(5).

NRCP 60(b)(6) permits relief from a judgment for "any other reason that justifies relief". During the hearing on this matter counsel for RUSSO argued that a request for relief under NRCP 60(b)(6) must present grounds "other" than those enumerated elsewhere in NRCP 60(b). In response counsel for SUNRISE stated, "Mr. Sampson says that, well, that's going to mean something different than the grounds that might be discussed in (1), (2), (3), (4), or (b) (1) (2) (3) (4), but I don't know if there's any law that says that." *See* Transcript of March 3, 2021 hearing at P. 68 L. 25 – P. 69 L. 4. The Court finds that the plain language of NRCP 60(b)(6) which permits relief for "any other reason that justifies relief" requires that any relief sought

under NRCP 60(b)(6) be for grounds “other” than the grounds set forth elsewhere in NRCP 60(b)(1-5). SUNRISE has not presented any authority indicating a party may seek relief under NRCP 60(b)(6) for reasons enumerated elsewhere in NRCP 60(b)(1-5). Indeed such a reading would be contrary to the purposes of NRCP 60(b)(1-5) as well as NRCP 60(c)(1). As SUNRISE has not provided the Court with “any other reason” that would justify relief from the Judgment, SUNRISE’s request for relief under NRCP 60(b)(6) motion is denied.

SUNRISE’s motion requests relief under NRCP 60(d)(3). NRCP 60(d)(3) permits a court to set aside a judgment “for fraud upon the court.” As the Nevada Supreme Court held in *NC-DSH Inc. v. Garner*, 218 P.3d 853, 858, 125 Nev. 647, 654 (2009):

The problem lies in defining what constitutes "fraud upon the court." Obviously, it cannot mean any conduct of a party or lawyer of which the court disapproves; among other evils, such a formulation "would render meaningless the [time] limitation on motions under [Rule] 60(b)(3)." *Kupferman v. Consolidated Research Mfg. Corp.*, 459 F.2d 1072, 1078 (2d Cir. 1972) (Friendly, J.), cited with approval in *Occhiuto*, 97 Nev. at 146 n. 2, 625 P.2d at 570 n. 2, and *Murphy*, 103 Nev. at 186, 734 P.2d at 739.

*Id* at 858, 654.

The Court went on to state:

The most widely accepted definition, which we adopt, holds that the concept embrace[s] only that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases . . . and relief should be denied in the absence of such conduct.

*Id.*

For a judgment to be set aside for fraud on the court, “the moving party must show clear and convincing evidence establishing fraud. *U.S. v. Estate of Stonehill*, 660 F.3d 415, 443 (9<sup>th</sup> Cir. 2011) (as cited in *Hsu v. Ubs Fin. Servs.* 2014 U.S. Dist. LEXIS 29792 (2014)).

///

The *Stonehill* Court went on to note:

Fraud on the court should, we believe, embrace only that species of fraud which does, or attempts to, defile the court itself. . . . [Movant] must demonstrate, by clear and convincing evidence, an effort . . . to prevent the judicial process from functioning in the usual manner. They must show more than perjury or nondisclosure of evidence, unless that perjury or nondisclosure was so fundamental that it undermined the workings of the adversary process itself.

*Id* at 444-445.

SUNRISE’s motion does not set forth any proof of wrongdoing by RUSSO, his counsel, or the Court, and certainly does not provide clear and convincing evidence of any fraud that would subvert the integrity of the Court itself. In its Reply filed February 25, 2021 SUNRISE expressly withdrew any intimation or accusation of RUSSO’s counsel committing any fraud or misconduct in securing the Default Judgment in this matter. *See* Reply at P. 5 footnote 5. For these reasons, any request for relief under NRCP 60(d)(2) is denied.

Based on the foregoing IT IS HEREBY ORDERED ADJUDGED AND DECREED that Defendant Sunrise Villa IX Homeowners Association’s Motion to Set Aside and/or Amend the Judgment in this matter be, and hereby is, DENIED.

Regarding RUSSO’s motion to enforce the settlement, under EDCR 7.50 an agreement between parties is effective if the same is entered in the minutes and/or is in writing subscribed by the party against whom the same shall be alleged or the party’s attorney. The agreement that was placed on the record on October 18, 2021, in which the active parties to this suit agreed: 1) that RUSSO’s rights against DUSLAK and/or SESMAN are not affected by the settlement; 2) that the settlement did not include DUSLAK and/or SESMAN; and 3) that nothing in any subsequent writing confirming the settlement agreement would affect any rights RUSSO may have against DUSLAK and/or SESMAN, is enforceable. RUSSO’s motion to enforce “requests



this Court enforce the settlement agreement confirmed on the record on October 18, 2019 and hold that the settlement did not affect SIMONE's rights against DUSLAK and/or SESMAN." *See* Motion at P. 8 L. 2-5. It is hereby ORDERED ADJUDGED AND DECREED that RUSSO's motion to enforce settlement is GRANTED. It is further ORDERED ADJUDGED AND DECREED that the settlement entered into in this matter between the active parties and PW JAMES did not affect any of RUSSO's rights against DUSLAK and/or SESMAN to any degree.

SUNRISE directs the Court to verbiage in the stipulation attached to the settlement agreement in which RUSSO and SUNRISE stipulated that for purposes of this litigation, in August 2016 DUSLAK and SESMAN were natural persons who were in the service of SUNRISE as independent contractors whom SUNRISE compensated and whom SUNRISE had the non-exclusive right to direct and control. *See*, SUNRISE's Consolidated Opposition to Plaintiff's Motions to Enforce Settlement and Reply to QBE's Motion to Enforce at P. 2 L. 12-27.

SUNRISE argues that the language "as independent contractors" found in the stipulation attached to the Agreement impacts RUSSO's rights against DUSLAK and/or SESMAN and releases DUSLAK and SESMAN if they are found to be employees of SUNRISE. SUNRISE's position is without merit as the plain language on page 4 of the settlement agreement states "PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN".

The settlement agreement also states on page 4, "ANY LANGUAGE IN THIS RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY

IMPACT PLAINTIFF’S RIGHTS AGAINAST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE DEEMED NULL AND VOID.” The stipulation attached to the settlement Agreement is referenced multiple times in the settlement Agreement itself and is incorporated into the Agreement. *See*, Bryan A. Garner, ed. (2001), *Black’s Law Dictionary* (2nd pocket ed.). St. Paul, MN: West Group. p. 341. ISBN 0-314-25791-8. Incorporation by reference is the act of including a second document within another document by only mentioning the second document. When a document is mentioned in a main document, the entire second document is made a part of the main document. *Id.* When a document is referenced in a contract, the referenced document becomes a part of the contract for all purposes. *Lincoln Welding Works, Inc. v. Ramirez*, 98 Nev. 342, 647 P.2d 381 (1982).

The Nevada Supreme Court has held that “where two instruments were executed together as one transaction they constituted but one instrument or contract, although written on different pieces of paper.” *Haspray v. Pasarelli*, 79 Nev. 203, 207-208, 380 P.2d 919, (1963).

The *Haspray* Court went on to say:

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

*Id.*

As SUNRISE argues that the language in the stipulation identifying DUSLAK and SESMAN “as independent contractors” impacts RUSSO’s rights against DUSLAK and SESMAN, and as the Agreement states that “ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF’S RIGHTS AGAINAST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE DEMED NULL AND VOID”, IT IS HEREBY

ORDERED ADJUDGED AND DECREED that the language “as independent contractors” as found in the stipulation is deemed null and void pursuant to the plain language found on page 4 of the settlement agreement.

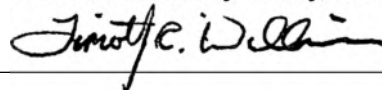
Paragraph 15 of the agreement, which is found on page 7 states:

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

As the language “as independent contractors” is deemed null and void, IT IS HEREBY ORDERED ADJUDGED AND DECREED that the words “as independent contractors” are severed and deleted from the Agreement as set forth in paragraph 15, and the remainder of the Agreement and stipulation, with the words “as independent contractors” deleted shall remain in full force and effect.

SO ORDERED.

Dated this 26th day of May, 2021



ZJ

028 C04 6CB9 C18D  
Timothy C. Williams  
District Court Judge

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;

**Fwd: Russo**

2 messages

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

Fri, May 14, 2021 at 11:21 AM

To: Shannon Splaine <ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Amanda Nalder <amanda@davidsampsonlaw.com>, Julie Funai <JFunai@lipsonneilson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

On Tuesday I sent the proposed Order to all of you. On Wednesday I sent the proposed Order to you again after correcting two typographical errors. My Tuesday email asked you to please let me know if you have any proposed changes regarding the same.

Having heard nothing from any of you, I will be submitting the same to the Court.

Attached is yet another copy of the proposed Order.

Thank you,

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

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

Date: Tue, May 11, 2021 at 11:35 AM

Subject: Russo

To: Shannon Splaine <ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Julie Funai <JFunai@lipsonneilson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

Based on the May 3, 2021 Minute Order the Court and the comments from the Court at the hearing today, I have prepared the attached proposed Order on the matter. Please let me know if you have any proposed changes regarding the same.

Thank you,

--

**David Sampson, Esq.**

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

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

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

630 S. 3rd St.

Las Vegas NV 89101

Phone: (702) 605-1099

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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.

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**2 attachments**



**656. Order on Motion to Set Aside.pdf**  
230K



**656. Order on Motion to Set Aside.pdf**  
202K

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1 **CSERV**

2  
3 DISTRICT COURT  
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: 5/26/2021

15 Michael Merritt

michael.merritt@mccormickbarstow.com

16 Tricia Dorner

tricia.dorner@mccormickbarstow.com

17 "David Sampson, Esq. " .

davidsampsonlaw@gmail.com

18 Amanda Nalder .

amanda@davidsampsonlaw.com

19 Chris Turtzo .

turtzo@morrissullivanlaw.com

20 Kristin Thomas .

kristin.thomas@mccormickbarstow.com

21 Michael R Merritt .

Michael.Merritt@mccormickbarstow.com

22 Shannon Splaine

ssplaine@lgclawoffice.com

23 Barbara Pederson

bpederson@lgclawoffice.com

24 David Clark

dclark@lipsonneilson.com

25 Debra Marquez

dmarquez@lipsonneilson.com

1	Jonathan Pattillo	JPattillo@springelfink.com
2	Ramiro Morales	rmorales@mfrlegal.com
3	Susana Nutt	snutt@lipsonneilson.com
4	Philip John	philip.john@mccormickbarstow.com
5	Laura Lybarger	laura.lybarger@mccormickbarstow.com
6	MSL Mandatory Back-up Email	nvmorrissullivanlemkul@gmail.com
7	William Reeves	wreeves@mfrlegal.com
8	Mail Room	espringel@springelfink.com
9	Thomas Levine	tlevine@springelfink.com
10	Jennifer Arledge	jarledge@sgroandroger.com
11	E File	efile@sgroandroger.com
12	Amanda Nalder	phoeny27@gmail.com
13	David Sampson	davidsampsonlaw@gmail.com
14	Ginger Bellamy	gbellamy@lgclawoffice.com
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## **EXHIBIT “3”**



. Any personal information which you provide will be processed in accordance with our Privacy Policy available at <http://www.armorholdings.com/privacy/>. Whilst we have taken reasonable precautions to ensure that this e-mail and any attachment has been checked for viruses, we cannot guarantee that they are virus free and we cannot accept liability for any damage sustained as a result of software viruses. We would advise that you carry out your own virus checks, especially before opening an attachment.

**From:** Leonard Fink <[lfink@springelfink.com](mailto:lfink@springelfink.com)>  
**Sent:** Thursday, November 07, 2019 7:17 PM  
**To:** Donald Jones <[DJones@armourrisk.com](mailto:DJones@armourrisk.com)>  
**Cc:** Ramle Morales <[rmorales@mfrlegal.com](mailto:rmorales@mfrlegal.com)>; Thomas G. Levine <[tlevine@springelfink.com](mailto:tlevine@springelfink.com)>  
**Subject:** 505800N Russo v. Cox Communications - trial update global settlement  
**Importance:** High

Don, we attended the hearing on Plaintiff's motion to enforce settlement. Although counsel admitted that he thought that Suslak and Desman were independent contractors and not employees, he still would not agree to dismissing them if the court later found out that they are (see exchange below). During the hearing though, he suggested that we attach a stipulation to the agreement that they were independent contractors. And as a side note, I confirmed with your insured that they were not employees today too. The court does not want to get more involved than it has and has asked us to see if we can get this taken care of tomorrow am. Because you are on the East coast, I suggested that we could conceivably get an agreement in the morning. The court, therefore, set a telephonic status conference for tomorrow to see where we are.

I think that this stipulation will protect both you and sunrise as much as possible under the law. Please let me know what you think as soon as you can. I'll be up early tomorrow.

Leonard

**From:** David Sampson <[davidsampsonlaw@gmail.com](mailto:davidsampsonlaw@gmail.com)>  
**Sent:** Thursday, November 7, 2019 10:41 AM  
**To:** Leonard Fink <[lfink@springelfink.com](mailto:lfink@springelfink.com)>  
**Subject:** Re: Russo release

We would not agree to #2. No rights against Duslak and Sessman are impacted.

On Thu, Nov 7, 2019 at 9:35 AM Leonard Fink <[lfink@springelfink.com](mailto:lfink@springelfink.com)> wrote:

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

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

Q002320

A-17-753606-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Negligence - Premises Liability

COURT MINUTES

June 03, 2021

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

June 03, 2021      09:05 AM      Defendant Sunrise Villas IX Homeowners Association's Motion to Release Exhibits From Evidence Vault on Order Shortening Time

HEARD BY: Williams, Timothy C.      COURTROOM: RJC Courtroom 03H

COURT CLERK: Darling, Christopher

RECORDER:

REPORTER: Isom, Peggy

**PARTIES PRESENT:**

David F. Sampson

Attorney for Plaintiff

Shannon G. Splaine

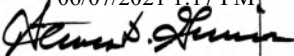
Attorney for Cross Defendant, Defendant

**JOURNAL ENTRIES**

APPEARANCES CONTINUED: Jennifer Arledge, Esq. present for Deft. Kevin Bushbaker.

Hearing held by BlueJeans remote conferencing. Ms. Splaine argued in support of the Motion including records are part of record on appeal. Mr. Sampson argued in opposition including certain timing issue and requested decision not made in haste. COURT FINDS, full and complete record should be available for purposes of appellate review; therefore, ORDERED, Motion to Release Exhibits from Evidence Vault on Order Shortening Time GRANTED. Ms. Splaine advised she will prepare and circulate the order. Court Clerk provided Records Clerk information and related copy fee in open court.

Proposed order(s) to be submitted electronically to DC16Inbox@clarkcountycourts.us.

  
CLERK OF THE COURT**ORDR****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

**ORDER GRANTING DEFENDANT  
SUNRISE VILLAS IX HOMEOWNERS  
ASSOCIATION'S MOTION TO RELEASE  
EXHIBITS FROM EVIDENCE VAULT ON  
ORDER SHORTENING TIME**

Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION filed a Motion to Release Exhibits From Evidence Vault on Order Shortening Time on June 1, 2021. The Court set the hearing for June 3, 2021. On June 2, 2021, Plaintiff, SIMONE RUSSO filed an Opposition to the Motion.

The Motion came up for hearing and oral arguments on June 3, 2021, with the Honorable Timothy Williams presiding. David Sampson, Esq., was present for Plaintiff, SIMONE RUSSO, Shannon Splaine, Esq. was present for Defendant SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION; and Jennifer Arledge, Esq. was present for Defendant Kevin Bushbaker.

1 The Court, having examined the record, hereby finds and rules as follows:

- 2 1. The Court believes that a full and complete record should be available for any appeal that  
3 may be filed in this matter; and  
4 2. The Court has considered fundamental fairness in the request for the records and believes  
5 there is no reason the requested records should not be made available and become part of  
6 the court record.

7 IT IS HEREBY ORDERED that Defendant, SUNRISE VILLAS IX HOMEOWNERS  
8 ASSOCIATION's Motion to Release Exhibits From Evidence Vault on Order Shortening Time is  
9 GRANTED.

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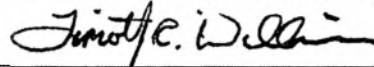
26 ///

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28 ///

IT IS FURTHER ORDERED that the Clerk of the Court is directed to file into the record of this case all exhibits presented at the December 17, 2019 Default Prove-Up Hearing, as well as the clerk's worksheets.

Dated this 7th day of June, 2021



DISTRICT COURT JUDGE

LB

9EA C60 29AF 3B27  
Timothy C. Williams  
District Court Judge

Submitted by:

**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

Approved as to form and content:

**LAW OFFICE OF DAVID SAMPSON, LLC. SGRO & ROGER**

*/s/ David Sampson*

*/s/ Jennifer W. Arledge*

**DAVID SAMPSON, ESQ.**

Nevada Bar No. 6811  
630 S. 3<sup>rd</sup> Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiff SIMONE RUSSO

**JENNIFER WILLIS ARLEDGE, ESQ**

Nevada Bar No. 8729  
720 South 7<sup>th</sup> Street, Third Floor  
Las Vegas, Nevada 12256  
Attorneys for Defendant  
KEVIN BUSHBAKER

v:\p-t\qbe\_sunrise\atty notes\drafts\pldgs\20210603\_ordermot\_releaseexhibitsevidencevault\_sgs.docx

**Ginger Bellamy**

---

**From:** David Sampson <davidsampsonlaw@gmail.com>  
**Sent:** Monday, June 07, 2021 8:20 AM  
**To:** Shannon Splaine  
**Cc:** Jennifer Arledge; Amanda Nalder; Ginger Bellamy; Barbara Pederson  
**Subject:** Re: Russo v Sunrise HOA, et al- revised draft Order

That accurately reflects the Court's Order. You are authorized to affix my e-signature.

Thank you,

On Mon, Jun 7, 2021 at 9:10 AM Shannon Splaine <[ssplaine@lgclawoffice.com](mailto:ssplaine@lgclawoffice.com)> wrote:

All:

Per Mr. Sampson's response to the prior draft Order, please find the revised order that has language on the page with the signatures. Please advise if we have your permission to add e-signatures and/or please email me your signature page of this version.

Thank you.

**Shannon G. Splaine, Esq.**

**LINCOLN, GUSTAFSON & CERCOS LLP**

**Experience. Integrity. Results.**

California Nevada Arizona

550 West C Street, Suite 1400  
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2415 E. Camelback Rd., Suite 700  
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[www.lgclawoffice.com](http://www.lgclawoffice.com)

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

# The Law Office of David Sampson, LLC.

630 S. 3rd St.  
Las Vegas NV 89101  
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.

**Ginger Bellamy**

---

**From:** Jennifer Arledge <jarledge@sgroandroger.com>  
**Sent:** Monday, June 07, 2021 9:58 AM  
**To:** Shannon Splaine; David Sampson  
**Cc:** Amanda Nalder; Ginger Bellamy; Barbara Pederson  
**Subject:** Re: Russo v Sunrise HOA, et al- revised draft Order

Good morning,

You may apply my electronic signature.

Thank you,

**Jennifer Arledge • Attorney**  
 jarledge@sgroandroger.com

**From:** Shannon Splaine <ssplaine@lgclawoffice.com>  
**Date:** Monday, June 7, 2021 at 8:10 AM  
**To:** David Sampson <davidsampsonlaw@gmail.com>, Jennifer Arledge <jarledge@sgroandroger.com>  
**Cc:** Amanda Nalder <amanda@davidsampsonlaw.com>, Ginger Bellamy <GBellamy@lgclawoffice.com>, Barbara Pederson <BPederson@lgclawoffice.com>  
**Subject:** Russo v Sunrise HOA, et al- revised draft Order

All:

Per Mr. Sampson's response to the prior draft Order, please find the revised order that has language on the page with the signatures. Please advise if we have your permission to add e-signatures and/or please email me your signature page of this version.

Thank you.

**Shannon G. Splaine, Esq.**  
**LINCOLN, GUSTAFSON & CERCOS LLP**  
**Experience. Integrity. Results.**

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1 **CSERV**

2  
3 DISTRICT COURT  
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 Granting Motion 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: 6/7/2021

15 Michael Merritt

michael.merritt@mccormickbarstow.com

16 Tricia Dorner

tricia.dorner@mccormickbarstow.com

17 "David Sampson, Esq. " .

davidsampsonlaw@gmail.com

18 Amanda Nalder .

amanda@davidsampsonlaw.com

19 Chris Turtzo .

turtzo@morrisullivanlaw.com

20 Kristin Thomas .

kristin.thomas@mccormickbarstow.com

21 Michael R Merritt .

Michael.Merritt@mccormickbarstow.com

22 Shannon Splaine

ssplaine@lgclawoffice.com

23 Barbara Pederson

bpederson@lgclawoffice.com

24 David Clark

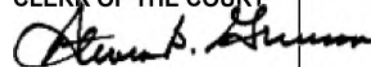
dclark@lipsonneilson.com

25 Susana Nutt

snutt@lipsonneilson.com

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2	Jonathan Pattillo	JPattillo@springelfink.com
3	Ramiro Morales	rmorales@mfrlegal.com
4	Philip John	philip.john@mccormickbarstow.com
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7	William Reeves	wreeves@mfrlegal.com
8	Mail Room	espringel@springelfink.com
9	Thomas Levine	tlevine@springelfink.com
10	Jennifer Arledge	jarledge@sgroandroger.com
11	E File	efile@sgroandroger.com
12	Amanda Nalder	phoeny27@gmail.com
13	David Sampson	davidsampsonlaw@gmail.com
14	Ginger Bellamy	gbellamy@lgclawoffice.com
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Electronically Filed  
6/7/2021 10:08 AM  
Steven D. Grierson  
CLERK OF THE COURT



OPPS  
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,	)	
	)	OPPOSITION TO MOTION TO HOLD
vs.	)	COUNSEL IN CONTEMPT AND
	)	COUNTER-MOTION TO STRIKE THE
COX COMMUNICATIONS LAS VEGAS,	)	MOTION PER NRS 41.660
INC., et al.	)	
	)	DATE: July 15, 2021
Defendants.	)	TIME: 9:05 a.m.

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

Proposed Intervenor QBE Insurance Corporation ("QBE"), by and through counsel William Reeves, hereby opposes the Motion To Hold Counsel In Contempt ("Motion") filed by Plaintiff Simone Russo ("Russo") as set forth herein.<sup>1</sup> QBE separately moves to strike the Motion on the basis that it violates Nevada anti-SLAPP statute and is therefore improper. See NRS 41.660.

Introduction

As this Court is aware, the current dispute between the parties centers around the terms of a settlement in which Russo, through, counsel, unequivocally stipulated as follows:

**IT IS HEREBY STIPULATED THAT FOR THE PURPOSES  
OF THIS LITIGATION AND FOR ANY AND ALL ISSUES  
RELATED TO SIMONE RUSSO'S CLAIMS AND  
SETTLEMENT, THAT IN AUGUST 2016 BOTH DEFENDANT  
RICHARD DUSLAK AND DEFENDANT JUSTIN SESMAN**

<sup>1</sup> Aside from other deficiencies, the motion is defective as it is directed to non-party William Reeves and not QBE. For this reason and others, the motion is properly denied.

WERE NATURAL PERSONS WHO WERE IN THE SERVICE OF SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AS INDEPENDENT CONTRACTORS, WHOM SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION COMPENSATED, AND WHOM SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION HAD THE NON-EXCLUSIVE RIGHT TO DIRECT AND CONTROL BY ASSIGNING PROJECTS WHILE DUSLAK AND SESMAN PERFORMED SERVICES FOR SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION.

As reflected in the record before this Court, QBE and its insured Sunrise HOA relied on this stipulation in agreeing to settle with Russo such that Russo is barred from taking a contrary position based on, inter alia, the doctrine of judicial estoppel. *Marcuse v. Del Webb Cmty., Inc.*, 123 Nev. 278, 287-88 (2007).

In connection with motions directed to the settlement and the corresponding default judgment, this Court issued a Minute Order and subsequently adopted a version of an Order that counsel for Russo prepared. See Exhibit A, B. Absent from these documents is any attachment altering and/or revising the stipulation quote above.

In baldly contending otherwise, counsel for Russo has now attempted to clandestinely alter the stipulation by surreptitiously striking key verbiage from it in an effort to re-write the stipulation as follows:

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

See Exhibit C.<sup>2</sup>

<sup>2</sup> The document was produced by Russo in the separate pending Federal case inexplicably without any notation on the document itself that it had been altered. Counsel for QBE added the verbiage and marking to the document in blue to highlight the change so as to prevent confusion.

1 Based on this altered stipulation, Russo now seeks to hold counsel for QBE in contempt for  
2 continuing to cite to the actually stipulation counsel agreed to and executed.

3 Russo's motion, which includes no legal citations and/or authority, is defective for numerous  
4 reasons, including the following:

- 5 • No Order has issued literally altering and striking verbiage from the stipulation  
6 counsel executed.
- 7 • To the extent this Court modified the stipulation by literally striking provisions from  
8 it, the original stipulation remains as part of the record such that it is citeable.
- 9 • This Court's Orders are subject to appellate review.
- 10 • The Motion violates Local Rule 2.20(c) as no authority is cited.
- 11 • No legal authority exists for holding counsel in contempt in continuing to cite to a  
12 document that is part of the record and which counsel previously executed.
- 13 • The litigation privilege bars the relief Russo requests. *Greenberg Traurig, LLP v.*  
14 *Frias Holding Co.*, 130 Nev. 627, 630 (2014),
- 15 • The motion violates Nevada anti-SLAPP statute as it seeks to penalize counsel for  
16 making a good faith communication. See NRS 41.660.

17 Based on these arguments, the Motion is properly denied. Meanwhile, pursuant to NRS  
18 41.660, QBE moves this Court to strike the Motion and award fees and costs.

#### 19 Discussion

##### 20 A. The Motion Is Defective And Properly Denied.

21 As noted above, the Motion is defective for numerous reasons, including the following:

##### 22 1. No Order Has Issued Altering And Striking Verbiage From The Stipulation.

23 In connection with motions the parties filed in this matter, this Court issued various rulings.  
24 Devoid from any of these rulings is a Order literally striking verbiage from the stipulation counsel  
25 previously executed. On this basis, the motion is denied.

##### 26 2. The Original Stipulation Remains Part Of The Record .

27 Counsel executed a stipulation that is and will remain part of this Court's record. It is  
28 appropriate and warranted, therefore, for the parties to continue to cite to it.

1           3.     This Court's Orders Are Subject To Appellate Review.

2           NRAP 3A permits for an appeal of this Court's Order. See *Davidson v. Davidson*, 132 Nev.  
3 709 (2016). To the extent this Court amended the stipulation, therefore, this ruling remains subject  
4 to appellate review such that continued citation to the previously-executed stipulation remains  
5 appropriate..

6           4.     The Motion Violates Local Rule 2.20(C) As No Authority Is Cited.

7           Local Rule 2.20(c) provides as follows:

8                     A party filing a motion must also serve and file with it a  
9                     memorandum of points and authorities in support of each ground  
10                    thereof. The absence of such memorandum may be construed as an  
                      admission that the motion is not meritorious, as cause for its denial or  
                      as a waiver of all grounds not so supported.

11           In this case, the Motion cites to no legal authority in violation of local rules. On this basis,  
12 the motion is denied.

13           5.     No Legal Authority Exists For Holding Counsel In Contempt.

14           NRS 22.010 provides as follows:

15                     The following acts or omissions shall be deemed contempts:

16                     1. Disorderly, contemptuous or insolent behavior toward the judge  
17                     while the judge is holding court, or engaged in judicial duties at  
18                     chambers, or toward masters or arbitrators while sitting on a reference  
                      or arbitration, or other judicial proceeding.

19                     2. A breach of the peace, boisterous conduct or violent disturbance in  
20                     the presence of the court, or in its immediate vicinity, tending to  
                      interrupt the due course of the trial or other judicial proceeding.

21                     3. Disobedience or resistance to any lawful writ, order, rule or process  
                      issued by the court or judge at chambers.

22                     4. Disobedience of a subpoena duly served, or refusing to be sworn or  
23                     answer as a witness.

24                     5. Rescuing any person or property in the custody of an officer by  
                      virtue of an order or process of such court or judge at chambers.

25                     6. Disobedience of the order or direction of the court made pending  
26                     the trial of an action, in speaking to or in the presence of a juror  
27                     concerning an action in which the juror has been impaneled to  
                      determine, or in any manner approaching or interfering with such  
                      juror with the intent to influence the verdict.

28                     7. Abusing the process or proceedings of the court or falsely

pretending to act under the authority of an order or process of the court.

Respectfully, no showing can be made of any violation of NRS 22.010. On this basis, the Motion is properly denied.

6. The Litigation Privilege Bars The Relief Russo Requests.

Communications made in the course of judicial proceedings are absolutely privileged so as to render those who made the communications immune from liability. *Fink v. Oshins*, 118 Nev. 428, 432–33, citing *Circus Circus Hotels v. Witherspoon*, 99 Nev. 56, 60 (1983). As it applies to attorneys participating in judicial proceedings, the privilege is intended to afford counsel with the utmost freedom in their efforts to obtain justice for their clients. *Greenberg Traurig, LLP v. Frias Holding Co.*, 130 Nev. 627, 630 (2014), citing *Bull v. McCuskey*, 96 Nev. 706, 712 (1980).

In this case, it is undisputed that the communications at issue were made in the course of pending judicial proceedings. On this basis, the communications cannot be used to create liability.

B. The Motion Violates Nevada Anti-SLAPP Statute.

NRS 41.660 provides as follows:

1. If an action is brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern:

(a) The person against whom the action is brought may file a special motion to dismiss . . .

. . .

3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

(a) Determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern;

(b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim;

Under Nevada law, a court must grant an anti-SLAPP special motion to dismiss where (1) the defendant shows, by a preponderance of the evidence, that the claim is based on a ‘good faith

1 communication in furtherance of ... the right to free speech in direct connection with an issue of  
 2 public concern' and (2) the plaintiff fails to show, with prima facie evidence, a probability of  
 3 prevailing on the claim. *Smith v. Zilverberg*, \_\_ Nev. \_\_, 481 P.3d 1222, 1227 (2021).

4 To satisfy the first prong, a party must show the following:

- 5 • The comments at issue fall into one of the four categories of protected  
 6 communications enumerated in NRS 41.637 and
- 7 • The communication is truthful or is made without knowledge of its falsehood.

8 *Stark v. Lackey*, 136 Nev. 38, 40 (2020) (quoting NRS 41.637).

9 NRS 41.367(3) defines a good faith communication as a written or oral statement made in  
 10 direct connection with an issue under consideration by a legislative, executive or judicial body, or  
 11 any other official proceeding authorized by law.

12 In this case, counsel for QBE made the statement regarding the stipulation regarding the  
 13 stipulation in connection with both this case and the pending Federal case. Meanwhile, the  
 14 statement is truthful as it is undisputed that counsel executed the stipulation. On this basis, QBE  
 15 has met its burden of proof under NRS 41.660.

16 A party opposing an anti-SLAPP motion, to meet the burden of proof, in connection with an  
 17 must demonstrate a probability of success by citing to competent, admissible evidence to  
 18 demonstrate merit to the claim presented. *Abrams v. Sanson*, 136 Nev. 83 (2020). Per above, the  
 19 Motion omits any citation to legal authority. Given this, Russo cannot meet its burden.

#### 20 Conclusion

21 For the reasons set forth herein, QBE respectfully submits that the Motion is properly denied  
 22 and that the Counter-Motion be granted along with an award of fees and costs.

23 Dated: June 7, 2021

24 MORALES FIERRO & REEVES

25  
 26 By: /s/ William C. Reeves  
 27 William C. Reeves  
 28 600 S. Tonopah Dr., Suite 300  
 Las Vegas, NV 89106  
 Attorneys for QBE



Supporting Declaration

I, William Reeves, declare as follows:

1. I am an attorney with Morales Fierro & Reeves, counsel for QBE.
2. The information contained herein is true and accurate.
3. Attached hereto are copies of the following documents:  
Exhibit A Court Minutes  
Exhibit B Court Order  
Exhibit C Modified Stipulation

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: June 7, 2021



William C. Reeves

# Exhibit A

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.

# Exhibit B

**ORD**

DAVID F. SAMPSON, ESQ.  
Nevada Bar No. 6811  
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*Attorney for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

SIMONE RUSSO, )

Plaintiff, )

vs. )

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

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

**ORDER ON DEFENDANT'S MOTION  
TO SET ASIDE AND/OR AMEND  
JUDGMENT, AND ORDER ON  
PLAINTIFF'S MOTION TO ENFORCE  
SETTLEMENT**

Defendants. )  
\_\_\_\_\_ )

**ORDER ON DEFENDANT'S MOTION TO SET ASIDE AND/OR AMEND JUDGMENT  
AND ORDER ON PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT**

Defendant SUNRISE's motion to set aside and/or amend judgment and Plaintiff's motion to enforce settlement, having come on for hearing the 3<sup>rd</sup> day of March, 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 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.

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 due to the conduct of one of the venire members. Trial again commenced on October 10, 2019. The October 10, 2019 trial concluded on October 18, 2019 when the active parties advised the Court that a settlement had been reached in this action as to certain parties. The 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.

Counsel for the settling parties then discussed reducing the settlement to writing, whereupon counsel for the Plaintiff confirmed that in drafting any release or the like related to the settlement:

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

*Id* at P. 10 L. 24 – P. 11 L. 12.

The settling parties agreed that nothing in any of the settlement documents would affect any rights Plaintiff may have against DUSLAK and/or SESMAN.

At a subsequent hearing on November 7, 2019 counsel for SUNRISE asked that DUSLAK and SESMAN be included as releasees if it was determined they were employees of Defendants. Counsel for RUSSO stated that there was no agreement to release DUSLAK and/or SESMAN when the settlement was placed on the record on October 18, 2019. Counsel for RUSSO stated, “this idea that if they're employees, then Sesman and Duslak are out. That was not agreed to.” *See*, November 7, 2019 transcript at P. 23 L. 12-15. Counsel for RUSSO continued by noting that on October 18, 2019 “we put on the record -- we're not waiving, releasing, or otherwise affecting anything against Sesman or Duslak. I don't think anyone would dispute that . . . it was a pretty significant point that day.” *Id* at P. 25 L. 6-16.



The Court then asked SUNRISE’s counsel, “Mr. Fink, are we disputing that?” *Id* at P. 25 L. 21-22. Counsel for SUNRISE answered, “My best recollection is that when Mr. Sampson said he was specifically retaining his rights to go against Mr. Sesman and Mr. Duslak, we all agreed to that.” *Id* at P. 26 L. 2-5.

The Court then gave the settling parties an opportunity to reduce the terms of the settlement placed on the record on October 18, 2019 to writing. Counsel for RUSSO commented that, in reducing the settlement to writing, “along the lines of Sesman and Duslak, all rights against them, anybody who insures them, you know, all of those are preserved. They're not affected. I would like to make sure that is crystal clear in whatever iteration we end up with.” *Id* at P. 40 L. 16-22.

In reducing the terms of the settlement placed on the record on October 18, 2019 to writing, the agreement the settling parties signed stated that RUSSO was preserving all rights to proceed against DUSLAK and SESMAN, and that neither DUSLAK and/or SESMAN were being released even in the event they were subsequently deemed SUNRISE employees. The agreement stated that “PLAINTIFF”, “Dr. SIMONE RUSSO” was releasing SUNRISE **“EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN”**. *See*, Settlement Agreement at P. 1 (emphasis in original). Each of the Defendants included in the agreement were identified as including the Defendants’ respective employees, with the clear exception of

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SUNRISE. On page one of the agreement the parties are identified. Defendant IES RESIDENTIAL, INC., is identified as:

IES RESIDENTIAL, INC. (hereinafter "IES") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;

*Id.*

Defendant COX is identified as:

COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS (hereinafter "COX") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;

*Id.*

Defendant SUNRISE however is identified as:

SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter "SUNRISE") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, insurers (Community Association Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc., DSCM, Inc. and Armour Risk Management, Inc. - but only as it relates to SUNRISE), **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM, INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the stipulation attached in exhibit "A")**, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners;

*Id* (emphasis in original).

The word "employees" is not used in the description of SURNISE as a Defendant.

Additionally, on page 4 of the release, the description of the released parties includes all of

Defendants’ “employees ***EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN . .*** .”. *Id* at P. 4 (emphasis in original). When referencing the employees of any of the settling Defendants it was made more than clear that the term “employees” who were being released did not include DUSLAK or SESMAN as releasees.

The settlement agreement further stated, “PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN”. *Id* at P. 4. The settlement agreement further confirmed, “ANY LANGUAGE IN THIS RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF’S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE DEEMED NULL AND VOID.” *Id* (emphasis in original).

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

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

There is no record of any of the parties filing any opposition(s) to RUSSO’s Application for Judgement by Default. None of the Defendants in this matter appeared at the December 17, 2019 hearing on RUSSO’s Application for Judgment by Default, nor did any of the Defendants,

or any other parties or non-parties, contest RUSSO's Application for Judgment by Default. Following the hearing on RUSSO's Application for Judgment by Default, the Court entered final Judgment in favor of RUSSO and against DUSLAK and SESMAN in the amount of \$25,000,000.00 with interest accruing from the date of entry until paid in full. Notice of Entry of the said final Judgment was served on all parties to this matter on December 17, 2019.

There is no record of any motion being filed under NRCP 59 to alter or amend the Judgment within 28 days after service of written notice of entry of the said Judgment. Indeed, there is no record of any such motion being filed at any time in 2019 or in 2020. There is no record of any motion being filed under NRCP 60 for relief from the final Judgment in this matter within six months after the date of the proceeding or after the date of service of the written notice of entry of the duly entered December 17, 2019 Judgment. Indeed, there is no record of any such motion being filed at any time in 2019 or in 2020.

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

SUNRISE filed the instant motion to set aside and/or amend judgment on January 21, 2021. Non-Party QBE filed a joinder to the said motion then subsequently withdrew its joinder to the same.

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

Regarding SUNRISE's motion to set aside and/or amend the Judgment entered in this matter, NRCP 59(e) states "a motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment." SUNRISE's motion to set aside

and/or alter or amend the final Judgment in this matter was filed on January 21, 2021, which was over a year after Notice of Entry of Judgment was served on the parties in this matter. SUNRISE's motion to set aside or alter the Judgment was not filed within 28 days after Notice of Entry of Judgment was served as required under NRCP 59(e) and is therefore denied.

Additionally, the Court finds that, in light of the procedural history of the case, there are no grounds to amend or set aside the Judgment pursuant to NRCP 60(a). The Court finds that there are no clerical mistakes, oversights or omissions in the duly entered Judgment. The Court further finds that the final Judgment in this matter was entered exactly as sought in Plaintiff's Application for Default judgment, which was provided to the active parties in this matter and which none of the active parties contested. The Court therefore denies SUNRISE's request for relief under NRCP 60(a).

The Court further finds that SUNRISE failed to establish grounds pursuant to NRCP 60(b)(1)-(6) to amend or set aside the Default Judgment in this matter. The Court finds that relief is not warranted under NRCP 60(b)(1) as SUNRISE has not presented the Court with evidence of mistake, surprise, or excusable neglect that the Court in its discretion would find warranted any such relief. The Court further finds that relief is not warranted under NRCP 60(b)(2) as SUNRISE has not presented the Court with evidence of newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under NRCP 59(b) that would cause the Court to exercise its discretion to grant such relief. The Court also finds that relief is not warranted under NRCP 60(b)(3) as SUNRISE has not presented the Court with evidence of fraud, misrepresentation, or misconduct by any opposing party that would cause the Court to exercise its discretion to grant such relief.

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Additionally, under NRCP 60(c)(1),

A motion under Rule 60(b) must be made within a reasonable time-and for reasons (1), (2), and (3) no more than 6 months after the date of the proceeding or the date of service of written notice of entry of judgment or order, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

SUNRISE's motion to set aside and/or alter or amend the Judgment in this matter was filed on January 21, 2021, which was over one year after Notice of Entry of Judgment was served on the parties in this matter on December 17, 2019. SUNRISE did not file a request for relief under NRCP 60(b) (1), (2), or (3) within 6 months after Notice of Entry of Judgment was served as required under NRCP 60(c)(1). SUNRISE's requests for relief under NRCP 60(b) (1), (2), and/or (3) are therefore also denied as untimely.

The Court also finds SUNRISE is not entitled to relief under NRCP 60(b)(4). The provisions of NRCP 60(b)(4) concerning void judgments "is normally invoked in a case where the court entering the challenged judgment did not have jurisdiction over the parties." *Misty Management v. District Court*, 83 Nev. 180, 182, 426 P.2d 728, 729 (1967) (citing *LaPotin v. LaPotin* 75 Nev. 264, 339, P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372, P.2d 679 (1962)). Judgments are typically deemed "void" in cases where the court entering the challenged judgment was itself disqualified from acting, e.g., *Osman v. Cobb*, 77 Nev. 133, 360 P.2d 258 (1961), or did not have jurisdiction over the parties, e.g., *LaPotin v. LaPotin*, 75 Nev. 264, 339 P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372 P.2d 679 (1962), or did not have jurisdiction over the subject matter of the litigation. *Misty Management v. District Court*, 83 Nev. 180, 426 P.2d 728 (1967).

DUSLAK and SESMAN were residents of Clark County Nevada when the underlying incident occurred. DUSLAK and SESMAN were both served with this suit in Clark County Nevada. The Court has jurisdiction over DUSLAK and SESMAN as well as the subject matter

of this negligence action. SUNRISE's motion does not assert that there were any jurisdictional issues over the parties or the subject matter. SUNRISE did not present any evidence of any jurisdictional issues. Relief is therefore not warranted under NRCP 60(b)(4).

NRCP 60(b)(5) allows a court to grant relief from a judgment if the judgment has been satisfied, released, or discharged. As noted above, SUNRISE did not present evidence that the duly entered Default Judgment against DUSLAK and SESMAN was satisfied, released, or discharged. The record is replete with examples of RUSSO confirming, and SUNRISE and the other active Defendants agreeing, that the settlement did not affect RUSSO's rights against DUSLAK or SESMAN in any way, that the settlement did not include SUNRISE employees, that the settlement did not include DUSLAK or SESMAN as employees of any of the Defendants, and that the settlement agreement specifically and completely excluded DUSLAK and SESMAN as releasees in all respects. The record further confirms that SUNRISE agreed RUSSO "shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN". As the Judgment against DUSLAK and SESMAN was not satisfied, released, or discharged, relief is not warranted under NRCP 60(b)(5).

NRCP 60(b)(6) permits relief from a judgment for "any other reason that justifies relief". During the hearing on this matter counsel for RUSSO argued that a request for relief under NRCP 60(b)(6) must present grounds "other" than those enumerated elsewhere in NRCP 60(b). In response counsel for SUNRISE stated, "Mr. Sampson says that, well, that's going to mean something different than the grounds that might be discussed in (1), (2), (3), (4), or (b) (1) (2) (3) (4), but I don't know if there's any law that says that." *See* Transcript of March 3, 2021 hearing at P. 68 L. 25 – P. 69 L. 4. The Court finds that the plain language of NRCP 60(b)(6) which permits relief for "any other reason that justifies relief" requires that any relief sought

under NRCP 60(b)(6) be for grounds “other” than the grounds set forth elsewhere in NRCP 60(b)(1-5). SUNRISE has not presented any authority indicating a party may seek relief under NRCP 60(b)(6) for reasons enumerated elsewhere in NRCP 60(b)(1-5). Indeed such a reading would be contrary to the purposes of NRCP 60(b)(1-5) as well as NRCP 60(c)(1). As SUNRISE has not provided the Court with “any other reason” that would justify relief from the Judgment, SUNRISE’s request for relief under NRCP 60(b)(6) motion is denied.

SUNRISE’s motion requests relief under NRCP 60(d)(3). NRCP 60(d)(3) permits a court to set aside a judgment “for fraud upon the court.” As the Nevada Supreme Court held in *NC-DSH Inc. v. Garner*, 218 P.3d 853, 858, 125 Nev. 647, 654 (2009):

The problem lies in defining what constitutes "fraud upon the court." Obviously, it cannot mean any conduct of a party or lawyer of which the court disapproves; among other evils, such a formulation "would render meaningless the [time] limitation on motions under [Rule] 60(b)(3)." *Kupferman v. Consolidated Research Mfg. Corp.*, 459 F.2d 1072, 1078 (2d Cir. 1972) (Friendly, J.), cited with approval in *Occhiuto*, 97 Nev. at 146 n. 2, 625 P.2d at 570 n. 2, and *Murphy*, 103 Nev. at 186, 734 P.2d at 739.

*Id* at 858, 654.

The Court went on to state:

The most widely accepted definition, which we adopt, holds that the concept embrace[s] only that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases . . . and relief should be denied in the absence of such conduct.

*Id.*

For a judgment to be set aside for fraud on the court, “the moving party must show clear and convincing evidence establishing fraud. *U.S. v. Estate of Stonehill*, 660 F.3d 415, 443 (9<sup>th</sup> Cir. 2011) (as cited in *Hsu v. Ubs Fin. Servs.* 2014 U.S. Dist. LEXIS 29792 (2014)).

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The *Stonehill* Court went on to note:

Fraud on the court should, we believe, embrace only that species of fraud which does, or attempts to, defile the court itself. . . . [Movant] must demonstrate, by clear and convincing evidence, an effort . . . to prevent the judicial process from functioning in the usual manner. They must show more than perjury or nondisclosure of evidence, unless that perjury or nondisclosure was so fundamental that it undermined the workings of the adversary process itself.

*Id* at 444-445.

SUNRISE’s motion does not set forth any proof of wrongdoing by RUSSO, his counsel, or the Court, and certainly does not provide clear and convincing evidence of any fraud that would subvert the integrity of the Court itself. In its Reply filed February 25, 2021 SUNRISE expressly withdrew any intimation or accusation of RUSSO’s counsel committing any fraud or misconduct in securing the Default Judgment in this matter. *See* Reply at P. 5 footnote 5. For these reasons, any request for relief under NRCP 60(d)(2) is denied.

Based on the foregoing IT IS HEREBY ORDERED ADJUDGED AND DECREED that Defendant Sunrise Villa IX Homeowners Association’s Motion to Set Aside and/or Amend the Judgment in this matter be, and hereby is, DENIED.

Regarding RUSSO’s motion to enforce the settlement, under EDCR 7.50 an agreement between parties is effective if the same is entered in the minutes and/or is in writing subscribed by the party against whom the same shall be alleged or the party’s attorney. The agreement that was placed on the record on October 18, 2021, in which the active parties to this suit agreed: 1) that RUSSO’s rights against DUSLAK and/or SESMAN are not affected by the settlement; 2) that the settlement did not include DUSLAK and/or SESMAN; and 3) that nothing in any subsequent writing confirming the settlement agreement would affect any rights RUSSO may have against DUSLAK and/or SESMAN, is enforceable. RUSSO’s motion to enforce “requests

this Court enforce the settlement agreement confirmed on the record on October 18, 2019 and hold that the settlement did not affect SIMONE's rights against DUSLAK and/or SESMAN." *See* Motion at P. 8 L. 2-5. It is hereby ORDERED ADJUDGED AND DECREED that RUSSO's motion to enforce settlement is GRANTED. It is further ORDERED ADJUDGED AND DECREED that the settlement entered into in this matter between the active parties and PW JAMES did not affect any of RUSSO's rights against DUSLAK and/or SESMAN to any degree.

SUNRISE directs the Court to verbiage in the stipulation attached to the settlement agreement in which RUSSO and SUNRISE stipulated that for purposes of this litigation, in August 2016 DUSLAK and SESMAN were natural persons who were in the service of SUNRISE as independent contractors whom SUNRISE compensated and whom SUNRISE had the non-exclusive right to direct and control. *See*, SUNRISE's Consolidated Opposition to Plaintiff's Motions to Enforce Settlement and Reply to QBE's Motion to Enforce at P. 2 L. 12-27.

SUNRISE argues that the language "as independent contractors" found in the stipulation attached to the Agreement impacts RUSSO's rights against DUSLAK and/or SESMAN and releases DUSLAK and SESMAN if they are found to be employees of SUNRISE. SUNRISE's position is without merit as the plain language on page 4 of the settlement agreement states "PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN".

The settlement agreement also states on page 4, "ANY LANGUAGE IN THIS RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY

IMPACT PLAINTIFF’S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE DEEMED NULL AND VOID.” The stipulation attached to the settlement Agreement is referenced multiple times in the settlement Agreement itself and is incorporated into the Agreement. *See*, Bryan A. Garner, ed. (2001), *Black’s Law Dictionary* (2nd pocket ed.). St. Paul, MN: West Group. p. 341. ISBN 0-314-25791-8. Incorporation by reference is the act of including a second document within another document by only mentioning the second document. When a document is mentioned in a main document, the entire second document is made a part of the main document. *Id.* When a document is referenced in a contract, the referenced document becomes a part of the contract for all purposes. *Lincoln Welding Works, Inc. v. Ramirez*, 98 Nev. 342, 647 P.2d 381 (1982).

The Nevada Supreme Court has held that “where two instruments were executed together as one transaction they constituted but one instrument or contract, although written on different pieces of paper.” *Haspray v. Pasarelli*, 79 Nev. 203, 207-208, 380 P.2d 919, (1963).

The *Haspray* Court went on to say:

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

*Id.*

As SUNRISE argues that the language in the stipulation identifying DUSLAK and SESMAN “as independent contractors” impacts RUSSO’s rights against DUSLAK and SESMAN, and as the Agreement states that “ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF’S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE DEMED NULL AND VOID”, IT IS HEREBY

ORDERED ADJUDGED AND DECREED that the language “as independent contractors” as found in the stipulation is deemed null and void pursuant to the plain language found on page 4 of the settlement agreement.

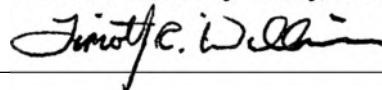
Paragraph 15 of the agreement, which is found on page 7 states:

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

As the language “as independent contractors” is deemed null and void, IT IS HEREBY ORDERED ADJUDGED AND DECREED that the words “as independent contractors” are severed and deleted from the Agreement as set forth in paragraph 15, and the remainder of the Agreement and stipulation, with the words “as independent contractors” deleted shall remain in full force and effect.

SO ORDERED.

Dated this 26th day of May, 2021



ZJ

028 C04 6CB9 C18D  
Timothy C. Williams  
District Court Judge

Submitted by:  
LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ David Sampson

DAVID SAMPSON, ESQ.  
Nevada Bar No.6811  
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630 S. 3<sup>rd</sup> St.  
Las Vegas NV 89101  
Attorney for Plaintiff



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

**Fwd: Russo**

2 messages

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

Fri, May 14, 2021 at 11:21 AM

To: Shannon Splaine <ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Amanda Nalder <amanda@davidsampsonlaw.com>, Julie Funai <JFunai@lipsonneilson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

On Tuesday I sent the proposed Order to all of you. On Wednesday I sent the proposed Order to you again after correcting two typographical errors. My Tuesday email asked you to please let me know if you have any proposed changes regarding the same.

Having heard nothing from any of you, I will be submitting the same to the Court.

Attached is yet another copy of the proposed Order.

Thank you,

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

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

Date: Tue, May 11, 2021 at 11:35 AM

Subject: Russo

To: Shannon Splaine <ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Julie Funai <JFunai@lipsonneilson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

Based on the May 3, 2021 Minute Order the Court and the comments from the Court at the hearing today, I have prepared the attached proposed Order on the matter. Please let me know if you have any proposed changes regarding the same.

Thank you,

--

**David Sampson, Esq.**

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

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

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

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Thank you.

--

**David Sampson, Esq.**

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

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Thank you.

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**2 attachments**



**656. Order on Motion to Set Aside.pdf**  
230K



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1 **CSERV**

2  
3 DISTRICT COURT  
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: 5/26/2021

15 Michael Merritt

michael.merritt@mccormickbarstow.com

16 Tricia Dorner

tricia.dorner@mccormickbarstow.com

17 "David Sampson, Esq. " .

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18 Amanda Nalder .

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19 Chris Turtzo .

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21 Michael R Merritt .

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23 Barbara Pederson

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24 David Clark

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25 Debra Marquez

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3	Susana Nutt	snutt@lipsonneilson.com
4	Philip John	philip.john@mccormickbarstow.com
5	Laura Lybarger	laura.lybarger@mccormickbarstow.com
6	MSL Mandatory Back-up Email	nvmorrissullivanlemkul@gmail.com
7	William Reeves	wreeves@mfrlegal.com
8	Mail Room	espringel@springelfink.com
9	Thomas Levine	tlevine@springelfink.com
10	Jennifer Arledge	jarledge@sgroandroger.com
11	E File	efile@sgroandroger.com
12	Amanda Nalder	phoeny27@gmail.com
13	David Sampson	davidsampsonlaw@gmail.com
14	Ginger Bellamy	gbellamy@lgclawoffice.com
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# Exhibit C

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

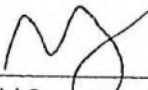
IT IS HEREBY STIPULATED THAT FOR THE PURPOSES OF THIS LITIGATION AND FOR ANY AND ALL ISSUES RELATED TO SIMONE RUSSO'S CLAIMS AND SETTLEMENT, THAT IN AUGUST 2016 BOTH DEFENDANT RICHARD DUSLAK AND DEFENDANT JUSTIN SESMAN WERE NATURAL PERSONS WHO WERE IN THE SERVICE OF SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION.

WHOM SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION COMPENSATED, AND WHOM SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION HAD THE NON-EXCLUSIVE RIGHT TO DIRECT AND CONTROL BY ASSIGNING PROJECTS WHILE DUSLAK AND SESMAN PERFORMED SERVICES FOR SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION.

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By:

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

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

SPRINGEL & FINK LLP

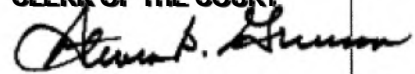
By:

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

**As Modified by Attorney Sampson**



Electronically Filed  
6/8/2021 9:31 AM  
Steven D. Grierson  
CLERK OF THE COURT



1 **NEOJ**  
2 **SHANNON G. SPLAINE, ESQ.**  
3 Nevada Bar No. 8241  
4 **LINCOLN, GUSTAFSON & CERCOS, LLP**  
5 **ATTORNEYS AT LAW**  
6 3960 Howard Hughes Parkway, Suite 200  
7 Las Vegas, Nevada 89169  
8 Telephone: (702) 257-1997  
9 Facsimile: (702) 257-2203  
10 [ssplaine@lgclawoffice.com](mailto:ssplaine@lgclawoffice.com)  
11 Attorneys for Defendant,  
12 **SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION**

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

10 **SIMONE RUSSO,**  
11 **Plaintiff,**

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

12 **v.**

**NOTICE OF ENTRY OF ORDER  
GRANTING DEFENDANT SUNRISE  
VILLAS IX HOMEOWNERS  
ASSOCIATION'S MOTION TO RELEASE  
EXHIBITS FROM EVIDENCE VAULT ON  
ORDER SHORTENING TIME**

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

21 **Defendants.**

22 **TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:**

23 **YOU AND EACH OF YOU will please take notice that an Order was entered on the 7<sup>th</sup> day**  
24 **of June, 2021. A true and correct copy is attached hereto.**

25 **DATED this 8<sup>th</sup> day of June, 2021.**

26 **LINCOLN, GUSTAFSON & CERCOS, LLP**

27 */s/ Shannon G. Splaine*

28 **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\p\ldgs\20210607\_neoj\_gkb.docx

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

3 **CERTIFICATE OF SERVICE**

4 I HEREBY CERTIFY that on the 8<sup>th</sup> day of June, 2021, I served a copy of the attached  
5 **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT SUNRISE VILLAS IX**  
6 **HOMEOWNERS ASSOCIATION'S MOTION TO RELEASE EXHIBITS FROM**  
7 **EVIDENCE VAULT ON ORDER SHORTENING TIME** via electronic service to all parties on  
8 the Odyssey E-Service Master List.

9  
10  
11 */s/ Ginger K. Bellamy*

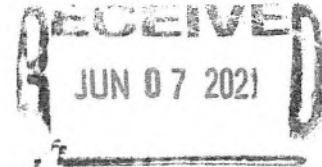
12 \_\_\_\_\_  
13 Ginger K. Bellamy, an employee  
14 of the law offices of  
Lincoln, Gustafson & Cercos, LLP

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ELECTRONICALLY SERVED  
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Electronically Filed  
06/07/2021 1:17 PM

*Shannon G. Splaine*  
CLERK OF THE COURT



**ORDR**

**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

**ORDER GRANTING DEFENDANT**  
**SUNRISE VILLAS IX HOMEOWNERS**  
**ASSOCIATION'S MOTION TO RELEASE**  
**EXHIBITS FROM EVIDENCE VAULT ON**  
**ORDER SHORTENING TIME**

Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION filed a Motion to Release Exhibits From Evidence Vault on Order Shortening Time on June 1, 2021. The Court set the hearing for June 3, 2021. On June 2, 2021, Plaintiff, SIMONE RUSSO filed an Opposition to the Motion.

The Motion came up for hearing and oral arguments on June 3, 2021, with the Honorable Timothy Williams presiding. David Sampson, Esq., was present for Plaintiff, SIMONE RUSSO, Shannon Splaine, Esq. was present for Defendant SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION; and Jennifer Arledge, Esq. was present for Defendant Kevin Bushbaker.

-|-

1 The Court, having examined the record, hereby finds and rules as follows:

- 2 1. The Court believes that a full and complete record should be available for any appeal that  
3 may be filed in this matter; and
- 4 2. The Court has considered fundamental fairness in the request for the records and believes  
5 there is no reason the requested records should not be made available and become part of  
6 the court record.

7 IT IS HEREBY ORDERED that Defendant, SUNRISE VILLAS IX HOMEOWNERS  
8 ASSOCIATION's Motion to Release Exhibits From Evidence Vault on Order Shortening Time is  
9 GRANTED.

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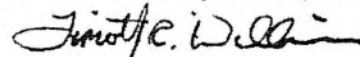
26 ///

27 ///

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1 IT IS FURTHER ORDERED that the Clerk of the Court is directed to file into the record of  
 2 this case all exhibits presented at the December 17, 2019 Default Prove-Up Hearing, as well as the  
 3 clerk's worksheets.

6 Dated this 7th day of June, 2021

7 

8 DISTRICT COURT JUDGE

LB

9 Submitted by:

9EA C60 29AF 3B27  
 Timothy C. Williams  
 District Court Judge

10 LINCOLN, GUSTAFSON & CERCOS, LLP

11 /s/ Shannon G. Splaine

12 SHANNON G. SPLAINE, ESQ.

13 Nevada Bar No. 8241  
 14 3960 Howard Hughes Parkway, Suite 200  
 Las Vegas, Nevada 89169  
 Attorneys for Defendant,  
 15 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

16 Approved as to form and content:

17 LAW OFFICE OF DAVID SAMPSON, LLC. SGRO & ROGER

18 /s/ David Sampson

/s/ Jennifer W. Arledge

19 DAVID SAMPSON, ESQ.

20 Nevada Bar No. 6811  
 630 S. 3<sup>rd</sup> Street  
 Las Vegas, Nevada 89101  
 Attorneys for Plaintiff SIMONE RUSSO

JENNIFER WILLIS ARLEDGE, ESQ.

21 Nevada Bar No. 8729  
 720 South 7<sup>th</sup> Street, Third Floor  
 Las Vegas, Nevada 12256  
 Attorneys for Defendant  
 22 KEVIN BUSHBAKER

23 v:\p-i\qbe\_sunrise.atty notes drafts\p\p\20210603\_ordarmot\_releaseexhibitsevidencevault\_sys.docx



**Ginger Bellamy**

---

**From:** David Sampson <davidsampsonlaw@gmail.com>  
**Sent:** Monday, June 07, 2021 8:20 AM  
**To:** Shannon Splaine  
**Cc:** Jennifer Arledge; Amanda Nalder; Ginger Bellamy; Barbara Pederson  
**Subject:** Re: Russo v Sunrise HOA, et al- revised draft Order

That accurately reflects the Court's Order. You are authorized to affix my e-signature.

Thank you,

On Mon, Jun 7, 2021 at 9:10 AM Shannon Splaine <[ssplaine@lgclawoffice.com](mailto:ssplaine@lgclawoffice.com)> wrote:

All:

Per Mr. Sampson's response to the prior draft Order, please find the revised order that has language on the page with the signatures. Please advise if we have your permission to add e-signatures and/or please email me your signature page of this version.

Thank you.

**Shannon G. Splaine, Esq.**

**LINCOLN, GUSTAFSON & CERCOS LLP**

**Experience. Integrity. Results.**

California Nevada Arizona

550 West C Street, Suite 1400  
 San Diego, California 92101  
 619.233.1150; 619.233.6949 Fax

3960 Howard Hughes Parkway, Suite 200  
 Las Vegas, Nevada 89169  
 702.257.1997; 702.257.2203 Fax

2415 E. Camelback Rd., Suite 700  
 Phoenix, Arizona 85016  
 602.606.5735; 602.508.6099 Fax

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

The information contained in the text (and attachments) of this e-mail is privileged, confidential and only intended for the addressee(s). Nothing in this email or attachments is intended as tax advice and must not be relied upon in that regard. Please consult your tax advisors.

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

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

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

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

Thank you.

**Ginger Bellamy**

---

**From:** Jennifer Arledge <jarledge@sgroandroger.com>  
**Sent:** Monday, June 07, 2021 9:58 AM  
**To:** Shannon Splaine; David Sampson  
**Cc:** Amanda Nalder; Ginger Bellamy; Barbara Pederson  
**Subject:** Re: Russo v Sunrise HOA, et al- revised draft Order

Good morning,

You may apply my electronic signature.

Thank you,

**Jennifer Arledge • Attorney**  
 jarledge@sgroandroger.com

**From:** Shannon Splaine <ssplaine@lgclawoffice.com>  
**Date:** Monday, June 7, 2021 at 8:10 AM  
**To:** David Sampson <davidsampsonlaw@gmail.com>, Jennifer Arledge <jarledge@sgroandroger.com>  
**Cc:** Amanda Nalder <amanda@davidsampsonlaw.com>, Ginger Bellamy <GBellamy@lgclawoffice.com>, Barbara Pederson <BPederson@lgclawoffice.com>  
**Subject:** Russo v Sunrise HOA, et al- revised draft Order

All:

Per Mr. Sampson's response to the prior draft Order, please find the revised order that has language on the page with the signatures. Please advise if we have your permission to add e-signatures and/or please email me your signature page of this version.

Thank you.

**Shannon G. Splaine, Esq.**  
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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)

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13 Court. The foregoing Order Granting Motion was served via the court's electronic eFile  
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14 Service Date: 6/7/2021

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24 David Clark

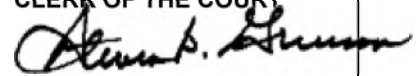
dclark@lipsonneilson.com

25 Susana Nutt

snutt@lipsonneilson.com

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3	Ramiro Morales	rmorales@mfrlegal.com
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6/21/2021 3:25 PM  
Steven D. Grierson  
CLERK OF THE COURT


**NOTC****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  
NOTICE OF FILING EXHIBITS FROM  
THE EVIDENCE VAULT**

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 Notice of Filing Exhibits from the Evidence Vault.

On June 7, 2021, this Court entered an Order Granting Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S Motion to Release Exhibits from Evidence Vault on Order Shortening Time. The Clerk of Courts has provided the records to SUNRISE's counsel. To date, the Clerk of Courts has not filed the documents into the record.

Attorneys for Defendant, SUNRISE VILLAS IX  
HOMEOWNERS ASSOCIATION

13A.App.2962

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

3 **CERTIFICATE OF SERVICE**

4 I HEREBY CERTIFY that on the 21<sup>st</sup> day of June, 2021, I served a copy of the attached  
5 **DEFENDANT SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S NOTICE OF**  
6 **FILING EXHIBITS FROM THE EVIDENCE VAULT** via electronic service to all parties on the  
7 Odyssey E-Service Master List.

8  
9  
10 */s/ Ginger K. Bellamy*

11 \_\_\_\_\_  
12 Ginger K. Bellamy, an employee  
13 of the law offices of  
14 Lincoln, Gustafson & Cercos, LLP

15  
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**EXHIBIT(S) LIST**Case No.: A-17-753606-CTrial Date: 12/17/19Dept. No.: 16Judge: Timothy C. WilliamsAppellant: Simone RussoCourt Clerk: Christopher DarlingReporter: Peggy Isom

vs.

Counsel for Plaintiff: David Sampson, Esq.Respondent: Cox Communications, et al.Counsel for  
Defendants: \_\_\_\_\_**HEARING BEFORE THE COURT****PLTF'S EXHIBITS**

Ex. #	Exhibit Description	Date Offered	Objection	Date Admitted
1	Medical Treatment Timeline	12-17-19	X	12-17-19
2	Medical Summary of Pltf. Simone Russo			
3	Medical Records and Billing Records from Center for Disease & Surgery of the Spine			
4	Medical Records and Billing Records from Kozmary Center for Paint Management			
5	Medical Records and Billing Records from Pueblo Medical Imaging			
6	Medical Records and Billing Records from Desert Radiology			
7	Medical Records and Billing Records from SimonMed Imaging			
8	Medical Records and Billing Records from Fyzical Therapy and Balance Centers			
9	Surgical Recommendation from Dr. Thalgott			

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## Russo Written Timeline

- √ 08/27/2016 Trip and Fall
- √08/31/2016 Las Vegas Urology – Dr. Neuman in depo:
- √09/13/2016 Kozmary Center for Pain and Management-
- √09/20/2016 Diseases for the Surgery of the Spine-
- √09/21/2016 **MRI of the C-Spine** Pueblo Medical Imaging
- √09/28/2016 **Pre-Op EKG** at Ameli Heart Center
- √10/03/2016 **Pre-Op Echocardiogram and Vascular Ultrasound** Ameli Heart Center
- √10/04/2016 **Pre-Op Stress Test** Ameli Heart Center
- √11/1/2016 **Chest X-ray** Desert Radiology
- √11/2/2016 **Surgery: Neck Fusion** Mountain View Hospital
- √04/10/2017 **Nerve Conduction Studies** Medical Neurology with Dr. Chang
- √04/12/2017 **Nerve Conduction Studies** Medical Neurology with Dr. Chang
- √04/13/2017 **Nerve Conduction Studies** Medical Neurology with Dr. Chang
- √04/21/2017 Fyzical Therapy
- √11/15/2017 **CT Scan of C-Spine** Desert Radiologists
- √11/16/2017 **CT Scan of L-Spine** Desert Radiologists
- √01/5/2018 **Pre-Op Testing** Pulmonary Associates of Nevada
- √01/12/2018 **2<sup>nd</sup> Neck Fusion Surgery** Dr. Thalgott
- √01/17/2018 **Extremity Study** Desert Radiology
- √04/19/2018-05/06/2018 **Home Health Care** Mountain View Hospital
- √05/21/2018 **Nerve Conduction Studies** Las Vegas Clinic
- √05/22/2018 **Nerve Conduction Studies** Las Vegas Clinic
- √06/11/2018 **Laminectomy** Mountain View Hospital
- √11/07/2018 Dr. Gephardt
- √12/13/2018 **MRI of C-Spine** at SimonMed Imaging
- √01/15/2019 **Surgical Recommendation** Dr. Thalgott
- √03/04/2019 Dr. Thornton
- √04/18/2019 **MRI of Pelvis** Desert Radiologists

08/27/2016  
Fall

09/13/2016  
Kozmary Center  
for Pain and  
Management

09/21/2016  
MRI of the C-  
Spine  
Pueblo Medical  
Imaging

10/03/2016  
Pre-Op  
Echocardiogram  
and Vascular  
Ultrasound  
Ameli Heart  
Center

08/31/2016  
Las Vegas  
Urology

09/20/2016  
Center for  
Diseases and  
Surgery of the  
Spine

09/28/2016  
Pre-Op EKG  
Ameli Heart  
Center

10/04/2016  
Pre-Op Stress  
Test  
Ameli Heart  
Center

11/2/2016  
Surgery: Neck  
Fusion  
Mountain View  
Hospital

04/12/2017  
Nerve  
Conduction  
Studies  
Medical  
Neurology with  
Dr. Chang

04/21/2017  
Physical Therapy

11/1/2016  
Chest X-ray  
Desert Radiology

04/10/2017  
Nerve  
Conduction  
Studies  
Medical  
Neurology with  
Dr. Chang

04/13/2017  
Nerve  
Conduction  
Studies  
Medical  
Neurology with  
Dr. Chang

11/15/2017  
CT Scan of C-  
Spine  
Desert  
Radiologists

01/5/2018  
Pre-Op Testing  
Pulmonary  
Associates of  
Nevada

01/17/2018  
Extremity Study  
Desert Radiology

05/21/2018  
Nerve  
Conduction  
Studies  
Las Vegas Clinic

11/16/2017  
CT Scan of L-  
Spine  
Desert  
Radiologists

01/12/2018  
2<sup>nd</sup> Neck Fusion  
Surgery  
Dr. Thalgott

04/19/2018-  
05/06/2018  
Home Health  
Care  
Mountain View  
Hospital

05/22/2018  
Nerve  
Conduction  
Studies  
Las Vegas Clinic

11/07/2018  
Dr. Gephardt

01/15/2019  
Surgical  
Recommendation  
Dr. Thalgott

04/18/2019  
MRI of Pelvis  
Desert  
Radiologists

06/11/2018  
Laminectomy  
Mountain View  
Hospital

12/13/2018  
MRI of C-Spine  
SimonMed  
Imaging

03/04/2019  
Dr. Thornton





Summary of Medical Treatment and  
Expenses for Simone Russo

Medical Provider	Dates of Treatment	Services Provided	Bill Amount
Ameli Heart Center (Dr. Dadourian)	9/28/16 , 10/3/2016, 10/4/2016	Surgical clearance	3252
Center for Diseases and Surgery of the Spine (Dr. Thalgott)	9/20/16, 9/22/16, 10/20/16, 10/27/16, 11/15/16, 12/8/16, 1/19/17, 1/24/17, 2/21/17, 4/6/17, 8/15/17, 8/22/17, 11/28/17, 12/28/17, 1/2/18, 1/12/18, 1/30/18, 3/6/18, 3/13/18, 4/12/18,	Surgeon	74540
Anesthesia and Intensive Care Specialists (Dr. Hager)	2/7/2017	Anesthesia	2500
Fyzical therapy and balance Center		Physical Therapy	1370.02
Mountain View Hospital	11/2/2016, 4/19/18, 5/16/18, 6/1/18, 6/11/18	Surgery , PT	428510.06
Pueblo Medical Imaging (Dr. Michael Sanders)	9/21/2016	MRI C-Spine	1650
Spring Valley Hospital	2/7/2017	Surgery	34950
Medical Neurology (Dr. Chang)	4/10/17, 4/12/17, 4/13/17	Nerve conduction studies	2759
Kozmary Center for Pain Management	9/13/16, 9/20/16, 10/18/16, 11/8/16, 11/29/16, 1/13/17, 2/7/17, 3/2/17, 3/29/17, 5/3/17, 5/24/17,6/21/17, 7/5/17, 8/15/17,	Pain Management	32,727.25
Las Vegas Clinic	5/10, 2018, 5/12/2018, 5/21/18, 5/22/18	Neurology	3800
Desert Radiology	11/1/16, 11/15/17, 1/17/18	Imaging	1883.09
Pulmonary Associates of Nevada	1/5/18,	Pre- op testing	203
Nevada Pain Care	11/7/18 - 5/22/19	Pain Management	3463.6
SimonMed Imaging	12/13/2018		1238.44
		<b>Total</b>	592846.46

**RUSSO-00192**

