

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

MIRACLE FLIGHTS, A NEVADA  
NONPROFIT CORPORATION,  
Appellant,

vs.

ANN MCGEE, A NEVADA RESIDENT,  
Respondent.

No. 83909

DOCKETING STATEMENT  
CIVIL APPEALS

Electronically Filed  
Jan 04 2022 06:06 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 16  
County Clark Judge Hon. Timothy C. Williams  
District Ct. Case No. A-19-799634-B

**2. Attorney filing this docketing statement:**

Attorney Kendele L. Works Telephone 702-240-7979  
Firm Christiansen Trial Lawyers  
Address 710 S 7th Street, Suite B  
Las Vegas, NV 89101

Client(s) Miracle Flights, a Nevada nonprofit corporation

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Tamara Beatty Peterson/Nikki L. Baker Telephone 702-786-1001  
Firm Peterson Baker, PLLC  
Address 701 S. 7th Street  
Las Vegas, NV 89101

Client(s) ANN MCGEE, a Nevada resident

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input type="checkbox"/> Judgment after bench trial            | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify): _____                         |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief    | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination        | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

ANN MCGEE, a Nevada resident, Plaintiff, vs. MIRACLE FLIGHTS, a Nevada nonprofit corporation, Defendants/Counterclaimant, vs. ANN MCGEE, an individual; WILLIAM MCGEE, an individual; DOES I through X, inclusive; and ROE BUSINESS ENTITIES, I through XX, inclusive Counterdefendants.

Eighth Judicial District Court Case No. A-19-799634-B

Complaint filed on August 1, 2019. Case still pending in said court.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This case arises out of a dispute between Ann McGee and Miracle Flights (“MF”) regarding the compensation and benefits packages to which Ms. McGee and her husband, William (Bill) McGee, are entitled. On October 31, 2019, Ms. McGee filed a motion for preliminary injunction asking that the Court immediately restore her position on MF’s Board of Directors (“Board”) and further that MF be required to continue paying her compensation and benefits package, including a retirement and consulting agreement, which MF asserts is invalid because it lacked the required Board approval. MF opposed the motion for preliminary injunction, and, at the request of MF, the Court heard eight days of evidentiary hearing proceedings on January 13, 14, 21 and 23, 2020, October 9, 2020, December 10 and 11, 2020, and January 27, 2021, with closing argument held on March 17, 2021.

On May 24, 2021, the Court issued a Minute Order granting Ms. McGee’s motion for preliminary injunction, reinstating her on to the Board of Directors and enjoining MF from taking any actions to terminate or alter the annuity and insurance payments to Ms. McGee pending final adjudication by the Court. The court subsequently denied reconsideration.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the the District Court Order reinstating Ms. McGee to the Board was erroneous as it did not serve the ends of justice and should be reconsidered because (1) it contained erroneous factual findings which the Court never made; (2) Ms. McGee made no showing of irreparable harm should she not be reinstated to the Board; (3) the Court failed to adequately consider the balance of hardships which analyses favors MF because of the disruption that will be caused by reinstating Ms. McGee to the Board in contrast with the lack of harm to Ms. McGee as evidenced by the passage of time since her removal; and (4) Ms. McGee’s permanent seat on the Board is void as a matter of public policy.

Whether the Court erred in denying reconsideration of its order granting injunctive relief.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: Whether Ms. McGee's permanent seat on the MF Board should be void as a matter of public policy.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Pursuant to NRAP 17(a)(9) this matter is presumptively retained by the Supreme Court because it originates in business court. While it challenges the grant of injunctive relief, which would presumptively be assigned to the Court of Appeals absent originating in business court; it also concerns an issue of statewide policy. See NRAP 17(b)(12); See also NRAP 17(a)(12). Accordingly, two of the three applicable provisions of NRAP 17 favor the Supreme Court presumptively retaining jurisdiction.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? N/A

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

## TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 7/13/21 & 11/5/21

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 7/14/21 & 11/5/21

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

X NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010). Date of filing Motion for Reconsideration was 7/27/21 and service was electronic.

(b) Date of entry of written order resolving tolling motion 11/5/21

(c) Date written notice of entry of order resolving tolling motion was served 11/5/21

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**19. Date notice of appeal filed** 12/03/21

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If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a); AA Primo Builders v. Washington, 126 Nev. 578, 585 (2010)

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**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)            | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The order granting injunctive relief and denial of the motion for reconsideration of the same is independently appealable under NRAP 3A(b)(3). The motion for reconsideration tolled the time for the direct appeal of the grant of injunctive relief in accordance with AA Primo Builders v. Washington, 126 Nev. 578, 585 (2010)

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Miracle Flights, Defendant/Counterclaimant  
Ann McGee, Plaintiff/Counterdefendant  
William McGee, Counterdefendant

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

William McGee, Counterdefendant is not involved as the Order appealed from did not involve him or the claims against him.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Ann McGee: Declaratory Relief; Breach of Contract--Retirement and Consulting Agmt; Breach of Contract--Employment Agmt; and Violation of NRS 82.186.

Miracle Flights: Breach of Fiduciary Duty--AM; Constructive Trust – AM and WM; Constructive Fraud – AM; Declaratory Relief – AM; and Unjust Enrichment – AM and WM.

All claims remain pending. Order is independently appealable under NRAP 3A(b)(3).

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☐ Yes

☒ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

Miracle Flights, Defendant/Counterclaimant  
Ann McGee, Plaintiff/Counterdefendant  
William McGee, Counterdefendant

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

Order is independently appealable under NRAP 3A(b)(3).

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Miracle Flights

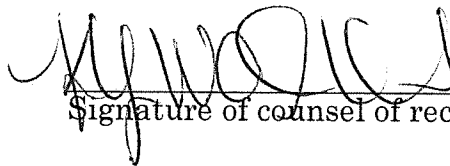
Name of appellant

Kendeleee L. Works

Name of counsel of record

January 4, 2021

Date



Signature of counsel of record

State of Nevada, County of Clark

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 4th day of January, 2022, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

PETERSON BAKER, PLLC

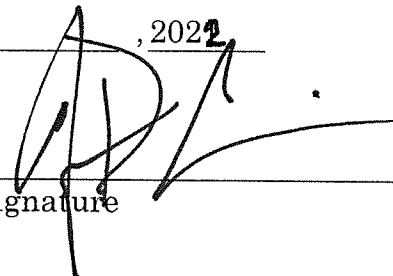
Tamara Beatty Peterson

Nikki L. Baker

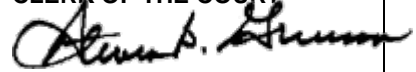
701 S. 7th Street

Las Vegas, NV 89101

Dated this 4th day of January, 2022



Signature



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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ANN MCGEE, a Nevada resident,  
  
Plaintiff,

v.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,  
  
Defendant.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,

Counterclaimant,

v.

ANN MCGEE, an individual; WILLIAM  
MCGEE, an individual; DOES I through X,  
inclusive; and ROE BUSINESS  
ENTITIES, I through XX, inclusive,

Counterdefendants.

Case No.: A-19-799634-B  
Dept. No.: XVI

**AMENDED COMPLAINT**

Plaintiff ANN MCGEE, by and through her attorneys of record, the law firm of Peterson Baker, PLLC, hereby files her Amended Complaint against Defendant MIRACLE FLIGHTS.

**PARTIES**

1. Plaintiff Ann McGee ("McGee") is a resident of Las Vegas, Clark County, Nevada. She is the founder of the organization Miracle Flights, its former National President, and a lifelong member of its Board of Directors.

2. Defendant Miracle Flights is a Nevada nonprofit corporation with its office located at 5740 S. Eastern Avenue, Suite 240, Las Vegas, Nevada. Formed in 1985, its mission is to improve access to health care by providing financial assistance to low income children for commercial air travel to obtain special medical care.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this matter pursuant to Nev. Const. Article 6, Section 6.

4. Venue is proper in, and Defendant is subject to the personal jurisdiction of this Court because Miracle Flights is headquartered in Las Vegas, Clark County, Nevada, and all or most of the events giving rise to this action took place in Clark County, Nevada.

### **FACTUAL ALLEGATIONS**

5. In 1985, McGee formed The Angel Planes, Inc., as a Nevada nonprofit corporation. This organization was later renamed as Miracle Flights for Kids, and later as Miracle Flights.

6. As a nonprofit corporation with tax-exempt status pursuant to IRC 501(c)(3), Miracle Flights files annual financial information forms, Forms 990, with the Internal Revenue Service. These Forms 990, which are public and intended to give the government and the public a picture of a nonprofit organization's activities each year, generally describe the organization's mission and most significant activities. The Forms 990 filed by Miracle Flights establish that Miracle Flights is a national social welfare, health and human services organization, with net assets in excess of \$40 million. As a public charity, Miracle Flights has coordinated over 125,000 flights for children in need of life-changing medical care, not found in their local communities, and thus closes a gap in the nation's healthcare system where private insurance or public assistance simply does not exist to cover medical transportation costs.

7. Miracle Flights is an organization that would not exist but for the efforts of McGee for the last 34 years. McGee has spent this time in loyal service to the organization, and working to find ways for children to get the life-saving care that they need. With her background as a teacher of children with disabilities, a Masters in Early Childhood Education, and a personal passion and dedication for facilitating the care and treatment of sick children, McGee created Miracle Flights

1 and caused it to thrive, growing the organization to an international organization with multi-million  
2 dollar revenue. Indeed, there would not be a Miracle Flights without McGee.

3 8. In June 1989, four years after the formation of Miracle Flights, McGee and Miracle  
4 Flights entered into an Employment Agreement ("Employment Agreement"). The Employment  
5 Agreement was executed on June 1, 1989 by Board members Robert L. Gore and Hesh Altman on  
6 behalf of The Angel Planes, Inc., n/k/a Miracle Flights, as Employer, and Ann Mishoulam, n/k/a  
7 Ann McGee, as Employee.

8 9. The 1989 Employment Agreement required that McGee would "devote substantially  
9 her entire attention to the furtherance of the charitable purposes" of Miracle Flights, including  
10 raising funds, publicity and public relations, and related administrative duties.

11 10. For her work on behalf of Miracle Flights, Miracle Flights, as Employer, agreed to  
12 pay McGee an annual salary and agreed to pay for health insurance for McGee.

13 11. Miracle Flights recognized that McGee's historical and institutional knowledge  
14 would be a benefit to the organization. Thus, pursuant to the Employment Agreement, Miracle  
15 Flights also agreed to maintain a permanent seat on the Board of Directors for McGee. Specifically,  
16 the 1989 Employment Agreement stated that "Employer recognizes the long term efforts and  
17 commitment of Employee and agrees to maintain a permanent seat on the Board of Directors for  
18 Employee."

19 12. The Board seat was a material term of the Employment Agreement, as McGee had  
20 already expended enormous personal sacrifice for the infant organization, and remained fully  
21 committed to the mission and vision of the organization. McGee wanted to ensure that she could  
22 continue to participate in strategic decisions of the organization beyond such a time as when she no  
23 longer desired to participate in day-to-day management control. Additionally, McGee is informed  
24 and believes, and thereon alleges, that the Board of Directors of Miracle Flights also desired that  
25 McGee would continue to participate in strategic decisions of the organization, even after McGee  
26 relinquished day-to-day management control.

27 13. The Employment Agreement had a further provision regarding termination of  
28 employment. Specifically, the 1989 Employment Agreement stated that if Employee should step

1 down at the completion of the term of the contract for any reason, other than dismissal for cause,  
2 Employee "shall remain as a consultant to The Angel Planes, Inc."

3 14. The Employment Agreement was amended in October 1998 (the "1998  
4 Amendment"). The 1998 Amendment was signed by Larry Scheffler, then Chairman of the Board  
5 of Directors, on behalf of Miracle Flights for Kids, Inc., f/k/a The Angel Planes, Inc. as Employer,  
6 and by Ann McGee f/k/a Ann Mishoulam as Employee.

7 15. The 1998 Amendment did not amend, revise, or omit the provision from the  
8 Employment Agreement regarding the Board seat, and instead that provision remained fully in  
9 place.

10 16. Further, the 1998 Amendment did not amend, revise, or omit the provision from the  
11 Employment Agreement regarding service as a consultant, and instead that provision remained  
12 fully in place.

13 17. In the 1998 Amendment, Miracle Flights agreed to provide McGee with "a fully  
14 funded pension plan" ("Pension Benefits"). Subsequently, annuities were purchased to fund  
15 McGee's Pension Benefits.

16 18. The Employment Agreement was again amended in 2007 by an Addendum (the  
17 "2007 Addendum"). The 2007 Addendum was signed by members of the Board of Directors of  
18 Miracle Flights for Kids n/k/a Miracle Flights as Employer, and by Ann McGee as Employee.

19 19. The 2007 Addendum did not amend, revise, or omit the provision from the  
20 Employment Agreement regarding the Board seat, and instead that provision remained fully in  
21 place.

22 20. Further, the 2007 Addendum did not amend, revise, or omit the provision from the  
23 Employment Agreement regarding service as a consultant, and instead that provision remained  
24 fully in place. The Employment Agreement, the 1998 Amendment, and the 2007 Addendum shall  
25 hereinafter be collectively referred to, where appropriate, as the "Employment Agreement".

26 21. Following McGee's retirement from Miracle Flights in 2015, on January 1, 2016,  
27 and consistent with the Employment Agreement, Miracle Flights entered into a Retirement and  
28 Consulting Agreement ("Retirement and Consulting Agreement") with McGee.

22. McGee is informed and believes, and thereon alleges, that a special meeting of the Board of Directors took place in late 2015, and that at this special meeting, the Board of Directors directed the Chief Executive Officer of Miracle Flights, Mark Brown ("Brown"), to present the Retirement and Consulting Agreement to McGee. Specifically, McGee knows that a special meeting of the Board of Directors occurred without her presence, and following that special meeting, Brown informed McGee that he was directed by the Board of Directors to present the Retirement and Consulting Agreement to her.

23. The Retirement and Consulting Agreement was signed by Mark Brown, as Chief Executive Officer (CEO) of Miracle Flights, and by Ann McGee, and was dated January 1, 2016.

24. The Retirement and Consulting Agreement confirmed the parties' prior agreement regarding a Board seat for McGee. Specifically, Section 6 of the Retirement and Consulting Agreement states as follows:

**Board Service.** McGee agrees to continue to serve on the Board of Directors of Organization for a period of not less than three (3) years from the date of execution of this Agreement. McGee's board service is viewed as a lifetime appointment approved in three (3) year increments. Both parties can agree to modify her service on the board by mutual agreement.

25. The Retirement and Consulting Agreement confirmed that Mark Brown, as CEO, had full authority to bind Miracle Flights to the Retirement and Consulting Agreement and further confirmed that the Board of Directors of Miracle Flights had authorized each and every term of the Retirement and Consulting Agreement. Specifically, Section 11 of the Retirement and Consulting Agreement stated that "Organization represents to McGee that this information has been reviewed by its full Board of Directors which, by action of the full Board of Directors, has determined its terms to be reasonable and which further voted to accept its terms and authorized the Executive Director to execute on its behalf."

26. McGee gave up significant and material terms that she was entitled to under the Employment Agreement by executing the Retirement and Consulting Agreement. For example, pursuant to the Employment Agreement, McGee was entitled to a raise for her final year's salary, which would have increased her pension annuity. By way of another example, pursuant to the Employment Agreement, McGee was entitled to be paid as a consultant in an amount equal to 50%

1 of her final salary with Miracle Flights. However, McGee gave up these and other valuable rights  
2 when she entered into the Retirement and Consulting Agreement.

3 27. Additionally, in the Retirement and Consulting Agreement, McGee and Miracle  
4 Flights agreed that the Pension Benefits "set forth in Exhibit A are now and shall continue to be the  
5 property of the Organization."

6 28. By letter dated July 29, 2019, Miracle Flights has taken the position that the  
7 Retirement and Consulting Agreement is invalid because Board approval was never obtained and/or  
8 because Brown did not have authority to enter into a "contract this size."

9 29. However, at the time of entering into the Retirement and Consulting Agreement,  
10 McGee reasonably believed that Brown could bind Miracle Flights to the Retirement and  
11 Consulting Agreement because (1) Brown informed McGee that he had the authority and was  
12 directed by the Board to enter into the Retirement and Consulting Agreement; (2) the Retirement  
13 and Consulting Agreement specifically states that the Board of Directors reviewed the Retirement  
14 and Consulting Agreement and voted to accept its terms; and (3) McGee knew that a special  
15 meeting of the Board of Directors had occurred. Thus, Miracle Flights is bound by the acts of its  
16 agent and Chief Executive Officer, Mark Brown.

17 30. Miracle Flights is further estopped from denying the validity of the Retirement and  
18 Consulting Agreement on the basis that Brown did not have the power to bind Miracle Flights to a  
19 "contract this size" because Brown has subsequently entered into contracts on behalf of Miracle  
20 Flights in an amount in excess of any monetary amount in the Retirement and Consulting  
21 Agreement, without specific and express Board approval, and Miracle Flights has performed  
22 pursuant to those contracts.

23 31. Recognizing the important contributions made by McGee over her lifetime of  
24 service to the organization, and consistent with both the Employment Agreement and the  
25 Retirement and Consulting Agreement, Miracle Flights codified in its Bylaws an allowance that  
26 the former CEO may serve as a lifetime member of the Board of Directors.

1           32.     McGee has been serving as a Director since her retirement, in fulfillment of her  
2 dedication to the organization and in accordance with the Retirement and Consulting Agreement  
3 and with the Bylaws.

4           33.     At no time did McGee agree to modify her service on the Board of Directors, and at  
5 no time did McGee agree to modify, in writing, the Retirement and Consulting Agreement.

6           34.     McGee is an active and often vocal member of the Board of Directors, exercising  
7 her fiduciary duties with the care and commitment expected of a director of a nonprofit  
8 organization.

9           35.     McGee's care and commitment to transparency and concern regarding financial  
10 transactions entered into by the organization were met with scorn and retaliation.

11           36.     Specifically, in a meeting of the Board of Directors in approximately December  
12 2018, McGee, acting in the capacity of a Director, raised a question regarding potential financial  
13 irregularities of the organization. Another director then challenged her, and specifically asked her:  
14 "[d]o you want to stay on this Board?"

15           37.     Despite knowing that McGee was out of town and unavailable to attend a meeting  
16 of the Board of Directors, Miracle Flights caused a letter addressed to McGee to be delivered via  
17 Federal Express to her home on Friday, March 22. The letter, dated March 21, purported to serve  
18 as a "notice of meeting and agenda" for a meeting of the Board of Directors.

19           38.     The letter stated that at the upcoming noticed meeting of the Board of Directors, the  
20 Board of Directors intended "to remove Paragraph 4.3 of the Miracle Flights bylaws", the provision  
21 that provides McGee with a lifetime appointment to the Board of Directors.

22           39.     The letter enclosed a purported Agenda for a Board meeting to be held on March  
23 26, 2019, a mere two business days later. The Agenda further stated as a proposed business item,  
24 "Modify Section 4.3 of the Miracle Flights Bylaws".

25           40.     McGee was unable to attend the purported meeting of the Board of Directors on  
26 March 26, 2019.

27           41.     McGee is informed and believes, and thereon alleges, that Miracle Flights knew that  
28 McGee was unable to attend a meeting scheduled for March 26, 2019, and that Miracle Flights

1 and/or its Board of Directors and/or its Chief Executive Officer opted to attempt to hold a Board  
2 meeting without McGee, in an effort to destroy McGee's legacy with the organization, all while  
3 acting with malice.

4 42. At no time did McGee agree to waive notice of the purported meeting of the Board  
5 of Directors on March 26, 2019.

6 43. Minutes of the purported meeting of the Board of Directors held on March 26, 2019,  
7 were provided to McGee. The Minutes do not reflect that McGee agreed to waive notice of the  
8 purported meeting of the Board of Directors on March 26, 2019, or even that McGee was provided  
9 with notice of the purported meeting.

10 44. The Minutes of the purported meeting of the Board of Directors state that the only  
11 members of the Board of Directors present were Dr. Chris Khorsandi ("Khorsandi") and Jessica  
12 Connell ("Connell"). The Minutes state that Khorsandi, the Chairman of the Board of Directors,  
13 made a motion to approve the following resolution: "RESOLVED THAT Article 4.3 of the bylaws  
14 deleted [sic] in its entirety." The Minutes further state that Connell seconded the motion, and the  
15 motion passed.

16 45. The Minutes of the purported meeting of the Board of Directors further state that  
17 Khorsandi made a motion not to renew McGee's term on the Board and to remove her from the  
18 Board, that Connell seconded the motion, and that the motion passed.

19 46. McGee is informed and believes, and thereon alleges, that at no time during this  
20 purported meeting of the Board of Directors did anyone discuss the organization's obligations under  
21 the Retirement and Consulting Agreement. Indeed, the Minutes provided to McGee contain no  
22 reference to the Retirement and Consulting Agreement, the Employment Agreement, or any  
23 obligations of the organization.

24 47. McGee has demanded that she be reinstated immediately to her position as a  
25 Director on the Board of Directors. Miracle Flights has not reinstated McGee to her position.

26 48. McGee would have not agreed to give up her valuable rights under the Employment  
27 Agreement by entering into the Retirement and Consulting Agreement without the guarantee of a  
28 lifetime appointment to the Board of Directors.



- b. That McGee is a member of the Board of Directors by virtue of the Retirement and Consulting Agreement;
- c. That the purported meeting of the Board of Directors of Miracle Flights on March 26, 2019, was held without adequate notice or waiver of notice;
- d. That any actions taken at the purported meeting of the Board of Directors of Miracle Flights on March 26, 2019 are void and without legal effect.

57. A justiciable controversy exists with regards to these issues. Miracle Flights has denied that McGee is a member of the Board of Directors and maintains that the actions taken at the purported meeting of March 26, 2019 are valid and legally binding. McGee asserts that she has a legally protectable interest, and this claim is ripe for judicial review.

58. Should the Court find that the Retirement and Consulting Agreement never took effect or is not a valid contract, then McGee requests that the Court issue a declaration that McGee is entitled to designate any person(s), entity or her estate to inherit the remaining Pension Benefits upon her death.

## **SECOND CLAIM FOR RELIEF**

### **(Breach of Contract-Retirement and Consulting Agreement)**

59. McGee repeats and realleges the allegations set forth in Paragraphs 1 through 58 above, as though fully set forth herein.

60. The Retirement and Consulting Agreement is a valid contract, supported by adequate consideration.

61. The terms of the Retirement and Consulting Agreement regarding board service of McGee are definite and certain.

62. McGee has fully performed pursuant to the Retirement and Consulting Agreement, and has offered to continue to perform pursuant to the Retirement and Consulting Agreement. Indeed, since March 26, 2019, Miracle Flights has sought McGee's consulting assistance and advice pursuant to the Retirement and Consulting Agreement, and McGee has provided such assistance and advice.

63. Miracle Flights has breached the Retirement and Consulting Agreement, by, among other things, (1) convening a meeting of the Board of Directors without adequate notice or waiver of notice for the stated purpose of deleting a bylaw that allows McGee a seat on the Board of Directors; (2) convening meetings of the Board of Directors without notice or action taken by McGee and/or without her presence; (3) attempting to remove McGee from the Board of Directors; and/or (4) denying McGee records of the organization to which she is entitled as a member of the Board of Directors.

64. Damages would be inadequate to remedy the breach of the Retirement and Consulting Agreement as to the term involving the Board Seat

65. McGee is entitled to specific performance of the Retirement and Consulting Agreement, and to remain on the Board of Directors of Miracle Flights as a Director.

66. Miracle Flights has further breached the Retirement and Consulting Agreement by, among other things, failing to pay McGee for consulting work to Miracle Flights.

67. As a direct and proximate result of Miracle Flights' acts and omissions, McGee has also suffered damages in an amount to be proven at trial, but in any event, in excess of \$15,000.00.

### **THIRD CLAIM FOR RELIEF**

#### **(Breach of Contract-Employment Agreement)**

#### **(Pled in the Alternative)**

68. McGee repeats and realleges the allegations set forth in Paragraphs 1 through 67 above, as though fully set forth herein.

69. Miracle Flights is asserting that the Retirement and Consulting Agreement never took effect and/or is invalid. McGee disagrees. However, should the Court agree with Miracle Flights that the Retirement and Consulting Agreement never took effect and/or is invalid, then this claim for relief is pled in the alternative to the Second Claim for Relief.

70. The Employment Agreement is a valid contract, supported by adequate consideration.

71. The terms of the Employment Agreement, including board service and payment for consulting services, are definite and certain.

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73. Miracle Flights has breached the Employment Agreement by, among other things, (1) convening a meeting of the Board of Directors without adequate notice or waiver of notice for the stated purpose of deleting a bylaw that allows McGee a seat on the Board of Directors; (2) by convening meetings of the Board of Directors without notice or action taken by McGee and/or without her presence; (3) failing to pay McGee for her consulting work at the amount of 50% of her annual base salary at the time of her retirement; (4) failing to pay McGee the final year's raise due to her; (5) purporting to deprive McGee of her contractual right to a permanent seat on the Board of Directors; and/or (6) by denying McGee records of the organization to which she is entitled as a member of the Board of Directors.

74. Damages would be inadequate to remedy the breach of the Employment Agreement as to the term involving the Board seat.

14 75. McGee is entitled to back pay pursuant to the Employment Agreement.

76. As a direct and proximate result of Miracle Flights' acts and omissions, McGee has suffered damages in an amount to be proven at trial, but in any event, in excess of \$15,000.00.

#### FOURTH CLAIM FOR RELIEF

**(Violation of NRS 82.186)**

20           77.     Nevada has a strong public policy in favor of a director's access to financial records  
21     of nonprofit organizations.

22           78. Pursuant to NRS 82.186, any director of a nonprofit organization is entitled to  
23 inspect in person or by agent or attorney, the books of account and all financial records of the  
24 nonprofit corporation.

25           79.     McGee has requested inspection of the Miracle Flights corporate records, including  
26     financial records.

27           80.     More than five (5) days have passed since such request, and Miracle Flights has not  
28     provided access to the requested records.

1 81. Miracle Flights' denial of such access is without privilege or justification.

2 82. NRS 82.186 authorizes a right of action for the failure of a nonprofit organization  
3 to comply with a request for financial records.

4 83. McGee is entitled to enforce the rights conferred by NRS 82.186 and is entitled to  
5 injunctive relief in the form of an order from this Court that Miracle Flights provide the requested  
6 records.

7 84. McGee has been forced to retain the services of an attorney to prosecute this matter.  
8 Pursuant to NRS 82.186, McGee is entitled to recover reasonable costs and attorneys' fees incurred  
9 herein, and in an amount in excess of \$15,000.

10 WHEREFORE, McGee prays for Judgment as follows:

11 1. On the First Claim for Relief, for a declaration and determination that (a) McGee is  
12 a member of the Board of Directors of Miracle Flights, by virtue of the Bylaws enacted by Miracle  
13 Flights; (b) McGee is a member of the Board of Directors of Miracle Flights, by virtue of the  
14 Retirement and Consulting Agreement; (c) that the purported meeting of the Board of Directors of  
15 Miracle Flights on March 26, 2019, was held without adequate notice or waiver of notice; (d) that  
16 any actions taken at the purported meeting of the Board of Directors of Miracle Flights on March  
17 26, 2019 are void and without legal effect; and (d) if the Court finds that the Retirement and  
18 Consulting Agreement never took effect or is not a valid contract, McGee is entitled to designate  
19 any person(s), entity or her estate to inherit the remaining Pension Benefits upon her death;

20 2. On the Second Claim for Relief, for specific performance of the Retirement and  
21 Consulting Agreement, and to compel Miracle Flights to perform its obligations pursuant to the  
22 Retirement and Consulting Agreement by allowing McGee to remain on the Board of Directors of  
23 Miracle Flights as a director, by allowing McGee notice of meetings, and by providing McGee  
24 records of the organization to which she is entitled;

25 3. On the Second Claim for Relief, damages in an amount in excess of \$15,000;

26 4. On the Third Claim for Relief, for specific performance of the Employment  
27 Agreement, and to compel Miracle Flights to perform its obligations pursuant to the Employment  
28 Agreement by allowing McGee to remain on the Board of Directors of Miracle Flights as a director,

1 by allowing McGee notice of meetings, and by providing McGee records of the organization to  
2 which she is entitled;

3 5. On the Third Claim for Relief, damages in an amount in excess of \$15,000;

4 6. On the Fourth Claim for Relief, for a temporary, preliminary and permanent  
5 injunction requiring Miracle Flights to provide financial records of Miracle Flights to McGee in  
6 her capacity as a member of the Board of Directors;

7 7. For an award of reasonable costs and attorneys' fees; and

8 8. Any additional relief this Court deems just and proper on the evidence presented at  
9 trial.

10 Dated this 22nd day of June, 2020.

11 PETERSON BAKER, PLLC

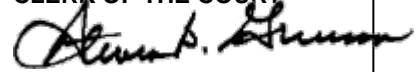
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*Attorneys for Miracle Flights*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ANN MCGEE, a Nevada resident,

Plaintiff,

vs.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,

Defendants/Counterclaimant,

vs.

ANN MCGEE, an individual; WILLIAM  
MCGEE, an individual; DOES I through X,  
inclusive; and ROE BUSINESS ENTITIES, I  
through XX, inclusive

Counterdefendants.

CASE NO.: A-19-799634-B

DEPT NO.: 16

**AMENDED COUNTERCLAIM OF  
MIRACLE FLIGHTS AND  
DEMAND FOR JURY TRIAL**

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**COUNTERCLAIM OF MIRACLE FLIGHTS**

Pursuant to Nev. R. Civ. P. Rule 13, Counterclaimant Miracle Flights brings the following counterclaims against Counterdefendants Ann McGee and William McGee, and each of them, and allege as follows:

**NATURE OF THE ACTION**

1. This Counterclaim arises from Counterdefendant Ann McGee's clear breaches of her fiduciary duties to Miracle Flights, as well as Counterdefendants Ann McGee's and William McGee's unlawful retention of funds that rightfully belong to Miracle Flights. After Miracle Flights received a cy press award in the amount of approximately Fifty-Four Million Dollars (\$54,000,000.00), Ann McGee used her control over the organization to pursue her own agenda and damaged Miracle Flights in the process.

2. Miracle Flights brings this Counterclaim to recover the costs and expenses it has incurred in connection with and arising out of Ann McGee's egregious misconduct and greed described herein. Miracle Flights also seeks to recover the costs and fees of prosecuting this Counterclaim.

**PARTIES**

3. Counterclaimant Miracle Flights ("Miracle Flights" or the "Organization") is a Nevada Non-Profit Corporation with its principal place of operation and headquarters located in Clark County, Nevada.

4. Upon information and belief, Counterdefendant Ann McGee ("AM") is an individual residing in Clark County, Nevada.

5. Upon information and belief, Counterdefendant William McGee ("WM") is an individual residing in Clark County, Nevada.

6. The true names and capacities, whether individual, corporate, partnership, association or otherwise of Defendants named herein as DOES I thought X, inclusive, and ROE BUSINESS ENTITIES XI through XX, inclusive, and each of them are unknown to Miracle Flights at this time, and Miracle Flights therefore sues said Defendants and each of them by such

1 fictitious name. Miracle Flights will advise this Court and seek leave to amend this Complaint  
2 when the names and capacities of each such Defendant have been ascertained.

3 7. Miracle Flights is informed and believes and thereupon alleges that DOES I  
4 through X, inclusive, and ROE BUSINESS ENTITIES XI through XX, inclusive, or some of  
5 them are either residents of the State of Nevada and/or were or are doing business in the state of  
6 Nevada and/or have intentionally targeted their harmful actions against Miracle Flights in  
7 Nevada.

8 8. Miracle Flights is informed and believes and thereupon alleges that at all times  
9 material hereto, Defendants were and are the agents, servants, alter egos or employees of the other  
10 named Defendants, that each of them conspired with the remaining Defendants, and in doing the  
11 wrongful conduct herein alleged, that each of them were acting within the course and scope of  
12 said agency and/or employment or conspiracy, with the knowledge and consent of each other  
13 Defendants and all of them jointly.

14 **JURISDICTION AND VENUE**

15 9. This Court has jurisdiction over this matter because the acts and omissions of  
16 Defendants occurred in Clark County, Nevada, and the amount in controversy exceeds Fifteen  
17 Thousand Dollars (\$15,000.00).

18 10. Pursuant to NRS 13.010, venue is proper in Clark County, Nevada because the  
19 underlying written agreements require performance in Clark County, Nevada; Miracle Flights is  
20 headquartered in Clark County, Nevada; AM and WM reside in Clark County, Nevada; and the  
21 acts and/or omissions giving rise to the claims occurred in Clark County, Nevada.

22 **GENERAL ALLEGATIONS**

23 11. Miracle Flights is a non-profit corporation dedicated to improving access to health  
24 care by providing financial assistance to low income children for commercial air travel to obtain  
25 special medical care; to promoting awareness of services through targeted outreach programs;  
26 and to enlisting the help of community-minded people through strategic calls to action.  
27  
28

1           12.     In 1985, AM formed The Angel Planes, Inc., a Nevada non-profit corporation.  
2 This organization was later renamed “Miracle Flights for Kids”, and presently operates as  
3 “Miracle Flights”.

4           13.     AM is the founder, former President, and former member of the Board of Directors  
5 for Miracle Flights.

6           14.     WM is a former Vice President of Administration for Miracle Flights. WM’s job  
7 responsibilities included “directing support activities for the organization including Human  
8 Resources, IT, facilities management and Office Administration functions.” With respect to  
9 Human Resources, WM “was responsible for overseeing all personnel issues including hiring and  
10 terminations, payroll, benefits, insurances, pensions, labor law compliance, [and] security.”

11           15.     Upon information and belief, at all times relevant herein, AM and WM have been  
12 legally married and reside together as husband and wife.

13           **A. The Relevant Agreements**

14           16.     On or about June 1, 1989, AM (formerly Ann Mishoulam) entered into an  
15 Employment Agreement with The Angel Planes, Inc., predecessor in interest to Miracle Flights  
16 (the “Employment Agreement”). The Employment Agreement provided for an annual salary  
17 review along with a minimum cost of living increase plus a merit raise. In addition, the  
18 Employment Agreement provided that Miracle Flights would retain AM under a consulting  
19 agreement following termination of the Employment Agreement, whereby AM would be  
20 compensated at a rate of Fifty Percent (50%) of her salary as of the date of the termination.

21           17.     On or about October 1, 1998, AM and Miracle Flights for Kids, predecessor in  
22 interest to Miracle Flights, entered into an amendment to the Employment Agreement (the “1998  
23 Amendment”), which provided for an annual salary review, to be conducted by the Board of  
24 Directors, which would result in a minimum raise based upon at least the minimum salary as  
25 shown in an independent study of similar salaried positions in the country. The 1998 Amendment  
26 also provided that AM would be the recipient of a fully funded pension plan.

27           18.     On or about January 30, 2007, AM and Miracle Flights for Kids, predecessor in  
28 interest to Miracle Flights, entered into an addendum to the Employment Agreement and the 1998

1 Amendment (the “2007 Addendum”) to specify the particular retirement benefits which AM  
2 would be entitled to upon her retirement from Miracle Flights. The 2007 Addendum provided  
3 that AM would be compensated at a rate of Seventy-Five Percent (75%) of her salary as of the  
4 date of the termination, to be paid in twelve equal installments, annually, plus an annual cost of  
5 living adjustment as her retirement income. In addition, the 2007 Addendum set forth additional  
6 retirement benefits including: (a) the purchase of an annuity for Fifty Thousand Dollars  
7 (\$50,000.00) annually, beginning fiscal year 2006/2007, which was to be owned by Miracle  
8 Flights and transferred to AM on the date of retirement; (b) a backfill of the current Variable  
9 Universal Life policy of Twenty Thousand Dollars (\$20,000.00) per year until retirement; (c)  
10 maximization of disability benefits; and (e) continued medical insurance coverage during  
11 retirement with all medical insurance premiums to be paid by AM.

12 **B. AM’s Ouster of Former Members of the Board of Directors**

13 19. On or about February 15, 2008, Miracle Flights was named the recipient of a cy  
14 press award in the amount of approximately Fifty-Four Million Dollars (\$54,000,000.00), which  
15 arose out of a class action settlement involving two large airlines.

16 20. On or about April 2, 2013, Miracle Flights received the first Forty Million Eight  
17 Hundred Seventy-One Thousand Four Hundred Five Dollars (\$40,871,405.00) of its cy press  
18 award. Miracle Flights received the remaining funds between August of 2014 and September of  
19 2014.

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

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8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

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21 [REDACTED]

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[REDACTED]

35. As demonstrated herein, AM has shown a history of manipulating and controlling the Board. This is further reflected in the 1998 Amendment that states she can only be fired for committing a felony.

**C. AM’s Self-Interested Conduct Following Her Removal of the Board of Directors**

36. Following her removal of the Board of Directors in 2014, AM remained the only member of the Board of Directors and used this opportunity to approve unjustifiable increases in her and WM’s salary and pension during a time in which there was no Board.

37. According to the relevant Bylaws, Fifty Percent of the voting membership of the Board shall constitute a quorum, and the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board. Although the Bylaws indicated the number of Directors shall be “as determined” by the Board members, any amendment, repeal or change of the Bylaws required a vote of two-thirds majority of the members of the Board. Thus, it is axiomatic the Bylaws required a minimum of three (3) Directors.

1           38. While acting as the sole member of the Board, AM formed a purported  
2 “Compensation Committee” in violation of the Bylaws. Upon information and belief, the  
3 Compensation Committee intentionally used inaccurate survey data as a basis to unjustifiably  
4 increase AM’s and WM’s salary prior to their retirement. Because the objective of the  
5 Compensation Committee was to approve unjustifiable increases in AM’s and WM’s salary, the  
6 formation of such committee was not in the best interests of Miracle Flights. By directing this  
7 scheme, AM breached her fiduciary duty to Miracle Flights.

8           39. On July 10, 2014, a meeting of the so-called “Compensation Committee” was held  
9 with Russ Bucklew, Keith Flynn, and AM in attendance. However, the Compensation Committee  
10 was not officially established until the July 8, 2015 Board of Directors Meeting. Nevertheless,  
11 the two items on the agenda for this particular meeting were executive compensation and career  
12 employee retirement benefits. According to the Minutes, AM attended the meeting “to make sure  
13 that the committee clearly understood IRS rules concerning CEO compensation.” During this  
14 meeting, it was decided to use the survey prepared by PRM Consulting Group to determine  
15 comparability.

16           40. Not only was the Compensation Committee improperly constituted, it was  
17 comprised of biased representatives controlled or influenced by AM. Upon information and  
18 belief, Mr. Bucklew never had any official roles with Miracle Flights; Mr. Flynn was a financial  
19 advisor with Ameriprise (who presumably was to benefit from the purchase of the subject  
20 annuities) and AM’s personal financial consultant.

21           41. On August 21, 2014, a second meeting of the purported “Compensation  
22 Committee” was held to determine AM’s compensation for 2013, backpay for 2012, and  
23 compensation and a bonus for 2013, and to form a retirement policy for older career employees,  
24 such as WM. According to the Minutes, the Committee, rather than the Board of Directors  
25 (functionally non-existent at the time), approved a salary of Three Hundred Fifty Thousand  
26 Dollars (\$350,000.00) annually, a bonus of Fifty Thousand Dollars (\$50,000.00), and backpay  
27 for 2012 and 2013 for AM. The Committee further approved compensation at a rate of Seventy-

28

1 Five Percent (75%) of final salary plus an annual cost of living adjustment to fund a retirement  
2 annuity for long term, career employees, including WM.

3 42. Indeed, the Minutes of the August 21, 2014 meeting of the Compensation  
4 Committee are completely silent as to who was present at this meeting and how such members  
5 voted.

6 43. AM remained the only member of the Board until she unilaterally appointed Keith  
7 Flynn as a Director on August 26, 2014, effective September 15, 2014. At the time of  
8 appointment, no potential conflicts of Mr. Flynn were disclosed to Miracle Flights.

9 **D. After her Fraud is Complete, Miracle Flights Appoints a New Board, Hires Mark**  
10 **Brown as CEO, and AM retires.**

11 44. On November 20, 2014, Am and Mr. Flynn voted unanimously to appoint Dr.  
12 Christopher Khorsandi to the Board of Directors, effective March 1, 2015. Dr. Khorsandi remains  
13 on the Board today.

14 45. On March 11, 2015, Marilyn Katz was voted to the Board. Ms. Katz' tenure on  
15 the Board was short, as she resigned on July 29, 2015, after AM unilaterally terminated Miracle  
16 Flights' then-CFO, John Barry, without Board approval.

17 46. In 2015, AM decided to retire, and the organization conducted a national search  
18 for a new CEO. After a 3-month search, a prominent Las Vegas businessman, Mark E. Brown,  
19 was selected as her successor.

20 47. On October 21, 2015, the Board made a final review of Mr. Brown's employment  
21 contract, which was approved by a unanimous vote.

22 48. After Miracle Flights hired Mark Brown as its CEO in October of 2015, Miracle  
23 Flights discovered that, Mr. Flynn, despite being a Director, was being compensated for acting as  
24 a financial advisor with respect to the management of the organization's money, which is a  
25 violation of the Bylaws and gives rise to potential conflicts of interest.

26 49. Minutes of the meeting of the Board of Directors held on October 20, 2016,  
27 indicate that it was decided to be in the best interest of the organization for Mr. Flynn to step  
28 down from the Board, and Mr. Flynn subsequently submitted a letter of resignation.

1           50.     On August 1, 2017, the Board voted unanimously to appoint Jessica Connell to  
2 the Board. Ms. Connell remains on the Board today.

3           **E. Miracle Flights Discovers Misconduct and Breaches by its Trusted Fiduciary**

4           51.     From its formation in 1985, Miracle Flights relied upon its Board members and  
5 executives to operate and guide Miracle Flights in the best interests of the Organization and the  
6 countless children Miracle Flights endeavors to help every day.

7           52.     On or about April 28, 2017, the Internal Revenue Service (“IRS”) began an audit  
8 of Miracle Flights, which remains ongoing today.

9           53.     During this audit, the new management of Miracle Flights learned AM had  
10 engaged in egregious misconduct and placed her own self-interests above that of Miracle Flights  
11 by not including annuities in the calculation of her retirement benefits, making her pension in  
12 excess of the agreed upon rate; by using inaccurate data in determining her and WM’s salary,  
13 which resulted in both being placed in higher than justified income categories; by receiving and  
14 retaining payment and/or the benefits of a supplemental health insurance policy, which is not part  
15 of the health insurance obligation owed to her; and seeking to enforce an invalid Consulting  
16 Agreement, which she knows never received required Board approval.

17           **Excess Annuities/Compensation**

18           54.     Approximately Four-Hundred Thousand Dollars (\$400,000.00) in Ameriprise  
19 annuities were systematically purchased over a multi-year period from 2007 to 2012 with Miracle  
20 Flights’ money and subsequently transferred into AM’s name. Based on past Minutes of the Board  
21 of Directors’ meetings, these annuities were intended to comprise part of the Seventy-Five  
22 Percent (75%) of AM’s final salary retirement pension calculation.

23           55.     Both AM and Mr. Flynn believed the annuities were purchased for the purpose of  
24 funding AM’s retirement—not as deferred compensation. Specifically, on February 12, 2007,  
25 AM sent a letter to the Board of Directors, stating as follows:

26           I want to thank you for supporting the research and findings of the Audit  
27 Committee and agreeing to amend my contract to include retirement benefits for  
28 me.

1 The purchase of a \$50,000.00 annual retirement annuity beginning in fiscal year  
2 2006/2007 by Miracle Flights for Kids and then transferred to my personal account  
upon retirement is an appreciated gesture of support for me.

3 Knowing that I will have a retirement plan in place beyond my social security  
4 gives me great peace of mind as I continue to work hard for the organization and  
the families we all unselfishly serve.

5 I look forward to working with you in the years to come.

6 56. On October 21, 2009, AM sent an Email to Mr. Copilevitz, stating, in pertinent  
7 part, as follows:

8 As you know, a couple of years ago by Board agreed to fund a \$50,000 per year  
9 annuity for me for my retirement. The annuity was fully funded last year.  
However, this year, unless something drastically changes, there will be no money,  
after operations, to find it.

10 Do you suggest that I put in place a letter saying that I understand the position of  
11 the company at this time, but that I do expect that the annuity will be "caught up"  
when the funding is available? Perhaps even with interest?

12 . . .

13 57. On January 19, 2016, Mr. Flynn sent an email to Miracle Flights' CEO Mark  
14 Brown, stating as follows:

15 The annuities we discussed do in fact belong to Ann. They were justifiably  
16 purchased by Miracle Flights to provide her a retirement benefit before there was  
ever any knowledge of the future lawsuit settlement. I do believe there are minutes  
17 that memorialize the intent of the board to provide a retirement to Ann in the form  
of annuities to be purchased when money was available. Because these were Ann's  
18 assets prior to the settlement funds coming to the organization, we did not think to  
include them in the calculation as part of her final 75% retirement package. This  
19 is something I will discuss with Dr. Khorsandi to get his thoughts. I was surprised  
to learn that they are still carried on Miracle Flights books as Ann has always been  
20 the owner even though they were purchased by Miracle Flights. This seems to be  
a mistake but double check with CPA Mark Harmon to see if they can be removed  
21 before the next tax return is filed.

22  
23 58. Moreover, there are no agreements or Board minutes which reflect any intention  
24 that AM receive her Seventy-Five Percent (75%) retirement pension in addition to the Four-  
25 Hundred Thousand Dollars (\$400,000.00) in annuities. Since these annuities were not included  
26 in the calculation, AM's pension is in excess of the agreed upon Seventy Five Percent (75%).

27 ///

28 ///

### **Salary/Pension Miscalculation**

59. Upon reviewing the process by which AM's final two years of compensation were calculated, Miracle Flights discovered AM used inaccurate data in determining her salary. This resulted in AM being placed in higher than justified income categories on the PRM salary survey, which was used to calculate her and WM's salary.

60. The 2013 PRM survey sets forth a breakdown of comparative salaries for a top executive officer by the following four categories: geographic location, organization type, organization budget, and total employees.

61. The 2014 PRM survey sets forth a breakdown of comparative salaries for a top executive officer by the following five categories: geographic location, organization type, organization budget, total employees, and time in position.

62. Both PRM surveys are clear in that they refer only to operating budget, not the total amount of money under management.

63. In 2013 and 2014, AM based her and WM's 2013 salary calculation on an organizational budget of 30.0mm – 59.9mm, despite that Miracle Flights had an operating budget of just \$2.5mm. Additionally, when Miracle Flights had only six employees as of August 22, 2014, AM used the figures applicable to an organization with fifteen to thirty-four employees.

64. For the 2014 calculation, AM again used the 30.0mm – 59.9mm operating budget despite that the operating budget remained 2.5mm. Additionally, Miracle Flights employed fourteen employees as of September 1, 2015, yet AM continued to use the average figure for organizations with fifteen to thirty-four employees.

65. Upon information and belief, AM added the total of all five categories utilized on the 2014 PRM survey, but only divided by four in order to reach the average mean salary. This mathematical error resulted in a salary that was Twenty Percent (20%) higher than it otherwise should have been.

66. The significance of these errors not only led to an unjustified increase in her and WM's salaries, but also caused an increase in the calculation of their final Seventy-Five Percent (75%) pension benefit.

1           67. Despite having sought an opinion from Errol Copilevitz, Esq. to advise on the  
2 reasonableness of her retirement benefits that were approved by the Board in 2007, AM refused  
3 to allow the Board to use or retain a consultant to determine the reasonableness of her salary  
4 increase in 2013-2014.

5           68. Not taking into account the inaccurate salary and inaccurate pension calculation,  
6 AM has still been paid in excess of her Seventy-Five Percent (75%) pension. The current IRS  
7 audit has revealed that, through October 31, 2019, AM has been compensated approximately One  
8 Hundred Forty-Seven Thousand Six Hundred Twenty-Four Dollars and Thirty-Seven  
9 (\$147,624.37) more than she should have been.

10                           **Improper Supplemental Medical Payments**

11           69. The 2007 Addendum clearly states that AM is entitled to receive reimbursement  
12 for medical insurance. Miracle Flights has fulfilled this requirement by reimbursing her for her  
13 Medicare payments.

14           70. However, in addition to reimbursing AM for her primary medical insurance  
15 consistent with the 2007 Addendum, AM has also sought and received payments for her  
16 supplemental health insurance policy, which is not part of the health insurance obligation owed  
17 to her by Miracle Flights.

18           71. Nowhere in AM's original Employment Agreement, the 1998 Amendment or the  
19 2007 Addendum does it specify that Miracle Flights is obligated to pay for supplemental  
20 insurance.

21           72. Accordingly, Miracle Flights is entitled to recover the funds which it has overpaid  
22 for AM's supplemental insurance.

23                           **Invalid Consulting Agreement**

24           73. Minutes of the meeting of the Board of Directors held on December 9, 2015,  
25 reflect that a discussion took place regarding the terms and conditions of a consulting contract for  
26 AM. The Minutes further reflect AM agreed to postpone the implementation of her consulting  
27 contract for a period of two (2) years. The Board then directed Miracle Flights' CEO Mark Brown  
28 to finalize and execute the contract with AM.

1           74. Although AM and Mr. Brown signed a document entitled “Retirement and  
2 Consulting Agreement” (the “Consulting Agreement”), the Consulting Agreement never received  
3 required final Board approval.

4           75. The Consulting Agreement is worth more than Six Million Dollars  
5 (\$6,000,000.00). As AM undoubtedly knew based on her decades with Miracle Flights, Mr.  
6 Brown does not have final signing authority for such a contract.

7           76. According to Section 3.6 of the relevant Bylaws, “Any commitment to purchase  
8 or contract for goods or services exceeding an aggregate value in excess of \$1.0 million requires  
9 authorization of the Board of Directors. Such authorization shall be determined by a majority vote  
10 of board members.”

11           77. In order to make the Consulting Agreement valid, final Board approval was  
12 required. Final Board approval was never given.

13           78. AM agreed with both Mr. Brown and Miracle Flights’ counsel, Mr. Copilevtiz, to  
14 delay seeking approval of the Consulting Agreement until after completion of the IRS audit,  
15 which remains ongoing today.

16           79. On June 6, 2017, AM sent an email to Mr. Brown, confirming their mutual  
17 understanding of the need to delay.

18           80. Despite AM’s sporadic and unsolicited reports, she has never been hired as a  
19 consultant and the Consulting Agreement is not valid due to lack of required final Board approval.

20           **F. AM’s Involvement on the Board Becomes Disruptive and Leads to Her Removal.**

21           81. After AM returned and during the IRS audit, Mr. Brown discovered AM’s fraud  
22 and breaches of her fiduciary duty, as the focus of the IRS audit was directed towards AM’s salary  
23 and pension. In accordance with his fiduciary duty and ethical obligations, Mr. Brown relayed his  
24 findings to the Board. This prompted outrage from AM as she turned on Mr. Brown. On  
25 December 23, 2018, AM sent Mr. Brown an e-mail, stating as follows:

26           Your reports and emails to the Board about the IRS audit are personal attacks on  
27 me. Your actions at the board meeting were cruel. As ceo you should defend me.  
28 You know full well I deserved my salary and those annuities and that if we all tell  
the same story line which is true the IRS legally will not be able to prove otherwise.

1 I was the only one there during this time so you don't know and no matter what  
2 they say they don't know. Look up and learn rebuttable presumption Mr. CEO!

3 I have been nothing but generous to you by turning over Miracle Flights to you  
4 and you repay me by throwing me under the bus and always trying to make me  
5 look foolish. Putting my trust in you to take over my charity has been the biggest  
6 mistake of my life.

7 And you have charmed Errol and convinced him now that I should give that money  
8 back which is [sic] I rightfully earned and is mine. Start paying me my consulting  
9 contract!!

10 You are making a mistake by making me your enemy Mark Brown. Quit targeting  
11 me and get on board or move on down the road. Your services are no longer  
12 wanted!

13 82. Thereafter, AM's involvement on the Board became disruptive and unproductive.

14 83. On March 21, 2019, Board Chairman Dr. Chris Khorsandi and Board Member  
15 Jessica Connell notified AM, via written correspondence sent by FedEx overnight, that a  
16 telephonic meeting of the Board of Directors was scheduled to take place on March 26, 2019 and  
17 provided a copy the agenda. The Board explained their intent to remove Section 4.3 of the Bylaws,  
18 which provides AM with a lifetime appointment to the Board

19 84. The items on the agenda were, inter alia, "Modify Section 4.3 of the Miracle  
20 Flights Bylaws" and "Composition of the Board of Directors."

21 85. On March 22, 2019, Miracle Flights' Senior Executive Assistant Vanessa Moreno  
22 sent an email to AM, confirming AM received the documents that were sent to her home via  
23 FedEx and again including a copy of the correspondence, agenda and call-in information.

24 86. The relevant Bylaws provide, in pertinent part, as follows:

25 Section 4.3 MIRACLE FLIGHTS founder Ann McGee shall be entitled at her  
26 option to remain a permanent member of the Board of Directors.

27 . . .

28 Section 4.7 The Board may be given notice of, or participate in, a meeting  
solely through use of remote communications. Participation in a  
meeting pursuant to this section constitutes presence in person at  
the meeting.

Section 4.8 All correspondence with the Board may be made through use of  
remote communication.



1           94.     As a member of the Board of Directors, AM stood as a fiduciary to Miracle Flights,  
2 which required a duty of good faith, honesty and full disclosure. AM's fiduciary relationship with  
3 Miracle Flights also imparted upon her duties of care and loyalty. That duty of loyalty required  
4 AM to act in the utmost good faith without any self-interest or self-dealing and maintain Miracle  
5 Flights' best interest over anyone else's interests.

6           95.     AM breached her fiduciary duties to Miracle Flights by committing the acts  
7 described herein, including but not limited to: (i) chartering a course of greed and deceit that  
8 originated with her agenda to oust the Board members in 2014 in order to provide her and her  
9 husband, WM, unjustifiable increases in their salary and pension during a time in which there  
10 was no Board, all of which was for her own personal benefit and thereby put her interests above  
11 the interests of Miracle Flights; (ii) failing to properly calculate her and WM's salary for 2013  
12 and 2014, and instead using fabricated survey data, which resulted in AM and WM being paid  
13 higher than they otherwise should have been and is contrary to the interests of Miracle Flights;  
14 (iii) receiving and retaining payment and/or the benefits of a supplemental health insurance  
15 policy, which is not part of the health insurance obligation owed to her by the Organization and  
16 was for her own personal benefit; and (iv) seeking to enforce an invalid Consulting Agreement,  
17 which she knows never received required Board approval, thereby placing her own personal  
18 interests above the interests of Miracle Flights.

19           96.     As a direct and proximate result of AM's breaches of her fiduciary duties, Miracle  
20 Flights has been damaged in an amount in excess of \$15,000.00.

21           97.     AM's misdeeds were intentional and/or negligent and thus warrant the imposition  
22 of personal liability for the damages she has caused.

23           98.     In breaching her fiduciary duties, AM acted maliciously and fraudulently, thus  
24 warranting the imposition of exemplary and punitive damages.

25           99.     Miracle Flights has been forced to retain the services of attorneys to prosecute this  
26 action and is entitled to an award of reasonable attorneys' fees and costs.

27     ///

28     ///

**SECOND CAUSE OF ACTION**  
**Constructive Trust – AM and WM**

100. Miracle Flights incorporates the allegations in the preceding and ensuing paragraphs as though fully set forth herein.

101. At all times relevant herein, AM, WM, and Miracle Flights had a fiduciary and/or confidential relationship between them by virtue of their employment with Miracle Flights.

102. As a result of AM's fraud and breaches of her fiduciary duty, AM's and WM's salaries were unjustifiably increased prior to their retirement. Consequently, AM's and WM's pensions were based on incorrect salary calculations. Both AM and WM have been overcompensated in both their salaries and pensions.

103. The miscalculation of AM's and WM's salaries resulted in them being overcompensated in their respective salaries for fiscal years 2013/2014 and 2014/2015.

104. Additionally, AM's 75% pension was based on the incorrect salary calculation of \$403,672.00, resulting in AM being overpaid on her pension by approximately \$6,486.00 per month. Approximately \$6,000,000.00 of Miracle Flights' money was used to purchase annuities from Ameriprise and Morgan Stanley to fund AM's pension. These annuities are held in Miracle Flights' name with AM as the beneficiary.

105. WM's 75% pension was based on the incorrect salary calculation of \$164,377.00, resulting in WM being overpaid on his pension by approximately \$3,819.08 per month. Approximately \$1,200,000.00 of Miracle Flights' money was used to purchase annuities from Ameriprise to fund WM's pension. These annuities are held in Miracle Flights' name with WM as the beneficiary.

106. Further, approximately \$400,000.00 in Ameriprise annuities were systematically purchased over a multi-year period from 2007 to 2012 with Miracle Flights' money and subsequently transferred into AM's name. These annuities were intended to comprise part of the 75% of AM's final salary retirement pension calculation. AM omitted and/or concealed the existence of these annuities from Miracle Flights' current Board, and thus, these additional

1 annuities were not included in AM's pension calculation. As a result, AM's pension is in excess  
2 of the agreed upon rate.

3 107. In light of AM's fraud and breaches of her fiduciary duty, it would be  
4 unconscionable for AM and WM to keep any benefits which were fraudulently induced and/or  
5 unjustifiably obtained.

6 108. Allowing AM and WM to retain legal title to the funds and/or property described  
7 herein against the interest of Miracle Flights would be inequitable.

8 109. The funds and annuities which AM and WM retained from Miracle Flights as  
9 alleged herein above are subject to a constructive trust.

10 110. The existence of a constructive trust is essential to the effectuation of justice.

11 111. Miracle Flights has been forced to retain the services of attorneys to prosecute this  
12 action and is entitled to an award of reasonable attorneys' fees and costs.

13 **THIRD CAUSE OF ACTION**

14 **Constructive Fraud – AM**

15 112. Miracle Flights incorporates the allegations in the preceding and ensuing  
16 paragraphs as though fully set forth herein.

17 113. At all times relevant herein, AM was a member of the Board of Directors of  
18 Miracle Flights.

19 114. As a member of the Board of Directors, AM stood as a fiduciary to Miracle Flights.

20 115. AM owed a legal and/or equitable duty to Miracle Flights arising from her  
21 fiduciary relationship with Miracle Flights.

22 116. AM breached that duty by misrepresenting and/or concealing material facts,  
23 including, but not limited to, the basis on which her and WM's compensation should have been  
24 calculated. Specifically, AM used inaccurate data to determine her and WM's salary, which  
25 resulted in unjustified increases in their salaries and pensions and is contrary to the best interests  
26 of Miracle Flights. In doing so, AM misrepresented and/or concealed: (i) Miracle Flights'  
27 operating budget and total number of employees; and (ii) the manner in which her and WM's  
28

1 2013 and 2014 salaries were calculated once a new Board was appointed. All of this was done in  
2 an apparent attempt to deceive Miracle Flights and inflate her and WM's salaries and pensions.

3 117. AM further misrepresented and/concealed the abovementioned material facts by  
4 precluding the Board from retaining a third-party consultant or using multiple surveys to  
5 determine the reasonableness of her and WM's salaries.

6 118. AM further breached her legal and/or equitable duty to Miracle Flights by  
7 approving her own compensation and retirement benefits for WM while acting as the sole member  
8 of the Board and without proper Board approval. More specifically, in June of 2014, Mr.  
9 Scheffler, Mr. Henry, Mr. McDonald and Mr. Groesbeck resigned from their respective positions,  
10 leaving AM as the sole Board member. Upon information and belief, on or about August 21–22,  
11 2014, AM approved and/or effectuated: (i) an increase in her base salary from \$231,539.52 to  
12 \$350,000.00 annually; (ii) a bonus of \$50,000.00; (iii) backpay for 2012 and 2013; and (iv)  
13 compensation at a rate of 75% of final salary plus an annual cost of living adjustment to fund a  
14 retirement annuity for her husband, WM.

15 119. AM further breached her legal and/or equitable duty to Miracle Flights by using  
16 Miracle Flights' money to purchase annuities from Ameriprise to fund her and WM's retirements  
17 through self-interested transactions with Mr. Flynn and/or without proper Board approval. More  
18 specifically, AM unilaterally purchased approximately \$3,652,321.10 in Ameriprise annuities  
19 with Miracle Flights' money to fund her retirement without proper Board approval in March of  
20 2014—a time in which AM was in conflict with the then-Board over issues related to her  
21 compensation. Additionally, AM purchased an additional \$1,230,138.90 in Ameriprise annuities  
22 with Miracle Flights' money to fund her retirement in October of 2014. AM also purchased  
23 approximately \$845,640.00 in Ameriprise annuities with Miracle Flights' money to fund WM's  
24 retirement in October of 2014.

25 120. Once Dr. Khorsandi was on the Board, AM presented false information upon  
26 which he approved certain salaries and benefits. In particular, AM failed to disclose her dispute  
27 with the prior Board and misrepresented the data used in calculating salary and benefits under the  
28 PRM survey, including but not limited to, that the organization's total amount of money under

1 management was the proper figure to rely on, rather than the organization's annual operating  
2 budget. AM further failed to disclose that she had already implemented the raise for which she  
3 sought after-the-fact Board approval.

4 121. AM also omitted and/or concealed the existence of an additional approximately  
5 Four Hundred Thousand Dollars (\$400,000.00) in annuities that were purchased from 2007 to  
6 2012 (prior to the current Board's involvement) to fund AM's retirement with Miracle Flights'  
7 money and subsequently transferred into AM's name.

8 122. AM's misrepresentations and concealments harmed Miracle Flights because even  
9 if there had been a valid board in place, the Organization would not have had accurate information  
10 in order to make an informed decision in approving AM's and WM's salaries. Had AM disclosed  
11 the existence of the \$400,000.00 in annuities and the true basis on which her and WM's  
12 compensation was calculated, and a valid board in place, Miracle Flights would have acted  
13 otherwise.

14 123. To date, Miracle Flights remains unaware of the true circumstances surrounding  
15 AM's fraud and breaches of her fiduciary duties.

16 124. Because the documents and information necessary to plead a fraud claim are  
17 peculiarly within AM's knowledge and/or control or are readily obtainable by AM, Miracle  
18 Flights is unable to plead the instant claim with more particularity than that contained herein.  
19 Accordingly, pursuant to *Rocker v. KPMG LLP*, 122 Nev. 1185, 148 P.3d 703 (2006), a relaxed  
20 pleading standard should be applied, and Miracle Flights should be afforded the opportunity to  
21 conduct discovery relevant to such claim with leave to amend with more particularity at a later  
22 time.

23 125. As a direct and proximate result of AM's breaches, Miracle Flights has been  
24 damaged in an amount in excess of \$15,000.00.

25 126. AM's misdeeds were intentional and/or negligent and thus warrant the imposition  
26 of personal liability for the damages she has caused.

27 127. In breaching her fiduciary duties, AM acted maliciously and fraudulently, thus  
28 warranting the imposition of exemplary and punitive damages.

1 128. Miracle Flights has been forced to retain the services of attorneys to prosecute this  
2 action and is entitled to an award of reasonable attorneys' fees and costs.

3 **FOURTH CAUSE OF ACTION**  
4 **Declaratory Relief – AM**

5 129. Miracle Flights incorporates the allegations in the preceding and ensuing  
6 paragraphs as though fully set forth herein.

7 130. Based upon the factual and legal allegations contained herein, pursuant to NRS  
8 Chapter 30 et al, Miracle Flights is entitled to a Declaration from this Court that: (i) the Consulting  
9 Agreement is invalid and unenforceable; and (ii) AM's removal and/or termination from the  
10 Board of Directors was proper and in accordance with Nevada law and the relevant Bylaws.

11 131. Miracle Flights has been forced to retain the services of attorneys to prosecute this  
12 action and is entitled to an award of reasonable attorneys' fees and costs.

13 **FIFTH CAUSE OF ACTION**  
14 **Unjust Enrichment – AM and WM**  
15 **(Plead in the Alternative)**

16 132. Miracle Flights incorporates the allegations in the preceding and ensuing  
17 paragraphs as though fully set forth herein.

18 133. AM and WM have unjustly retained the money and/or property of Miracle Flights  
19 against fundamental principles of justice, equity and good conscience.

20 134. As a direct and proximate result of AM's and WM's conduct, Miracle Flights has  
21 been damaged in an amount in excess of \$15,000.00.

22 135. Miracle Flights is informed and believes and thereupon alleges that AM's and  
23 WM's actions were willful, malicious and oppressive, thereby entitling Miracle Flights to  
24 exemplary and/or punitive damages in an amount to be proven at trial.

25 136. Miracle Flights has been forced to retain the services of attorneys to prosecute this  
26 action and is entitled to an award of reasonable attorneys' fees and costs.

27 **DEMAND FOR JURY TRIAL**

28 137. Miracle Flights hereby demands a trial by jury for all issues so triable.

**WHEREFORE**, Miracle Flights prays for judgment as follows:

1. For compensatory damages due and owing, in an amount in excess of \$15,000.00

**810 S. Casino Center Blvd., Suite 104  
Las Vegas, Nevada 89101  
702-240-7979 • Fax 866-412-6992**

- Dated this 24th day of February, 2020.

By

**ORDR**

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*Attorneys for Ann and Bill McGee*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ANN MCGEE, a Nevada resident,

Plaintiff,

v.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,

Defendant.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,

Counterclaimant,

v.

ANN MCGEE, an individual; WILLIAM  
MCGEE, an individual; DOES I through X,  
inclusive; and ROE BUSINESS  
ENTITIES, I through XX, inclusive,

Counterdefendants.

Case No.: A-19-799634-B

Dept. No.: XVI

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION**

Plaintiff/Counterdefendant Ann McGee's ("Mrs. McGee") Motion for Preliminary Injunction filed on October 31, 2019 (the "Injunction Motion") originally came before this Honorable Court on December 4, 2019. Pursuant to a request from Defendant Miracle Flights ("Miracle Flights"), an evidentiary hearing on the Injunction Motion took place on January 13, 14, 21, & 23, 2020; October 9, 2020; December 10 & 11, 2020; and January 27, 2021; with closing argument held on March 17, 2021. Tamara Beatty Peterson, Esq., and Nikki L. Baker, Esq., of the

1 law firm of Peterson Baker, PLLC, appeared on behalf of Mrs. McGee. Mrs. Ann McGee was also  
2 present. Peter S. Christiansen, Esq., Kendele L. Works, Esq., and Keely A. Perdue, Esq., of the  
3 law firm Christiansen Law Offices, appeared on behalf of Miracle Flights. Mark Brown ("Mr.  
4 Brown"), a representative from Miracle Flights, was also present.

5 Having considered the pleadings and papers on file herein and the evidence admitted during  
6 the evidentiary hearing, having heard and considered the testimony of the witnesses called to testify,  
7 and having considered the oral and written arguments of counsel, the Court makes the following  
8 Findings of Fact and Conclusions of Law:

9 **FINDINGS OF FACT**

10 1. Mrs. McGee formed The Medical Flight Team, Inc., a Nevada nonprofit  
11 corporation, on or about April 30, 1985. The organization was later renamed to The Angel Planes,  
12 Inc., then to Miracle Flights for Kids, and later as simply Miracle Flights.

13 2. Since its inception, the purpose of Miracle Flights has been "[t]o provide health and  
14 welfare flight services through financial assistance to children of low to moderate income families  
15 who must travel far away from home to receive necessary medical care."

16 3. For the first four years, Mrs. McGee worked as Miracle Flights' CEO without pay,  
17 ensuring that any donations were going towards programming needs and not administrative costs.  
18 Using and leveraging her background as a teacher of children with disabilities, with a Masters in  
19 Early Childhood Education, and her personal passion and dedication to facilitating the care and  
20 treatment of sick children, Mrs. McGee took this fledgling organization and grew it to epic global  
21 proportions.

22 4. In June 1989, four years after the formation of Miracle Flights, Mrs. McGee<sup>1</sup> and  
23 Miracle Flights entered into an Employment Agreement. There were several key components of  
24 the Employment Agreement:

- 25 • For the first time, Miracle Flights agreed to pay Mrs. McGee a salary for her work;  
26 • Miracle Flights agreed to "procure major medical coverage and disability insurance"  
27 for Mrs. McGee;

28 <sup>1</sup> Mrs. McGee was formerly known as Ann Mishoulam.

- 1 • Miracle Flights agreed to maintain a permanent seat on the Board of Directors (the "Board") for Mrs. McGee;
- 2 • Mrs. McGee would remain as a consultant to Miracle Flights following termination of the Employment Agreement, unless she was dismissed for cause;
- 3 • Mrs. McGee's pay as a consultant to Miracle Flights following retirement would be at a rate of 50% of her annual base salary; and
- 4 • Miracle Flights would provide Mrs. McGee with a pension plan.

5 Among other items, the Board seat was a material provision of the Employment Agreement, as  
6 Mrs. McGee had already expended enormous personal sacrifice for the infant organization and  
7 remained fully committed to its mission and vision. Mrs. McGee wanted to ensure that she could  
8 continue to participate in strategic decisions of the organization beyond such a time as she no longer  
9 desired to participate its day-to-day management.

10 5. Mrs. McGee would not have signed the Employment Agreement if it did not have  
11 her right to a permanent Board seat memorialized therein.

12 6. Mr. Brown admitted under oath that Mrs. McGee's Employment Agreement gives  
13 her a permanent seat on the Board. He also conceded that her Employment Agreement does not  
14 provide any qualifying language to her right to a permanent seat on the Board.

15 7. In October 1998, the Employment Agreement was amended (the "1998  
16 Amendment"). The 1998 Amendment had certain key provisions:

- 17 • A salary review would be conducted annually for Mrs. McGee by the Board, with a  
18 minimum raise, based upon "at least the minimum salary as shown in an independent  
19 study of similar salaried positions in the country"; and
- Miracle Flights agreed to provide Mrs. McGee with "a fully funded pension plan".

20 The 1998 Amendment did not modify the provision of the Employment Agreement regarding the  
21 permanent Board seat.

22 8. In January 2007, the Employment Agreement was again amended (the "2007  
23 Addendum"). The 2007 Addendum addressed two issues: (1) a retirement benefit for Mrs. McGee,  
24 once she retired; and (2) additional deferred compensation meant to reimburse Mrs. McGee for the  
25 years she served with little or no compensation.

26 9. The retirement benefit provided that Mrs. McGee would receive an annual benefit  
27 equivalent to 75% of her base salary as a pension, once she retired (the "Retirement Benefit").  
28

10. Additionally, there was another term in the 2007 Addendum that addressed Mrs. McGee's many years of service to the organization for which she received little to no compensation. This deferred compensation provision was intended to reimburse Mrs. McGee for those years, and provided that Miracle Flights would purchase Deferred Compensation Annuities:

Employer recognizes that as founder of Miracle Flights for Kids employee served for many years with little or no compensation or pension benefits and agrees to:

- a. Purchase an annuity at \$50,000 annually beginning fiscal year 2006/2007 to be owned by Miracle Flights For Kids and transferred to employee on date of retirement. . . .

11. In late 2015, Mrs. McGee decided to retire at the age of 68.

12. In December 2015, the Board held a meeting and discussed the terms of a new contract for Mrs. McGee. The Board determined, at the time, that Mrs. McGee was ideally situated to mentor and to transition the position to Mr. Brown so that he could leverage his skills for the organization.

13. As recorded in the Minutes, the Board approved the Retirement and Consulting Agreement between Miracle Flights and Mrs. McGee, and directed Mr. Brown to finalize and execute the contract with Mrs. McGee: "Discussion was held and agreed upon for the terms and conditions of a consulting contract for Ann McGee. . . . The board directed Mr. Brown to finalize and execute the contract with Ms. McGee."

14. On or about January 1, 2016, and in compliance with the Board's directives, Mr. Brown presented the Retirement and Consulting Agreement to Mrs. McGee for signature. Mr. Brown executed at least three versions of the Retirement and Consulting Agreement on behalf of Miracle Flights as its CEO.

15. The express language of the Retirement and Consulting Agreement provides that Mr. Brown, as signatory for Miracle Flights, had the authority to enter into the contract:

. . . In addition, Organization represents that it has analyzed the compensation and related consideration elements, determining this Agreement and all of its terms reasonable, including compensation, as specifically set forth herein. **Organization represents to McGee that this information has been reviewed by its full Board of Directors which, by action of the full Board of Directors, has determined its terms to be reasonable and which further voted to accept its terms and authorized the Executive Director to execute on its behalf.**

(emphasis added).

16. In an effort to ensure the continued viability of Miracle Flights, Mrs. McGee made significant monetary concessions in the Retirement and Consulting Agreement. At the outset, she gave up her final year's raise, which significantly affected her retirement earnings. She also agreed to be bound by a non-compete provision, a non-disclosure provision, and a release of any and all prior claims or liabilities against Miracle Flights.

17. Additionally, as detailed in her Employment Agreement, she was entitled to remain as a consultant following her retirement and be paid the amount of 50% of her annual base salary as CEO for her consulting services. But the Retirement and Consulting Agreement asked her to spend an initial term of two years "to share the knowledge she has accumulated" but do so without pay. Once that initial term was completed, then Mrs. McGee was to be paid \$50,000 per year, for the next five years, for her work as a consultant.

18. The Retirement and Consulting Agreement also addressed the 75% Retirement Benefit outlined in her Employment Agreement. Specifically, Mrs. McGee gave up the term that required her to receive 75% of her final salary as an annual Retirement Benefit, and instead agreed to accept distribution from retirement annuities—purchased by Miracle Flights for this specific purpose—as full compensation of her retirement pay. The Retirement Annuities are identified on Exhibit A of the Retirement and Consulting Agreement.

19. The Retirement and Consulting Agreement also specifically addressed Mrs. McGee's health insurance. The agreement does not otherwise define health insurance, and does not differentiate between Medicare or supplemental health insurance.

20. Reflective of the intent of the parties under the Retirement and Consulting Agreement, Mrs. McGee has been reimbursed for both Medicare and supplemental health insurance since her retirement in 2015.

21. Miracle Flights has been making the annuities payments since Mrs. McGee retired.

22. Miracle Flights has never claimed that Mrs. McGee is not entitled to any retirement benefits or health insurance benefits. Indeed, Mr. Brown conceded that Mrs. McGee is entitled to retirement and insurance benefits. Miracle Flights does, however, contend that Mrs. McGee is

1 being overpaid on the annuities and that she is not entitled to reimbursement of supplemental or  
2 secondary health insurance.

3 23. The Retirement and Consulting Agreement again confirmed Mrs. McGee's lifetime  
4 position on the Board, with the ability to modify the service only by mutual agreement. Section 6  
5 of the Retirement and Consulting Agreement states as follows:

6 **BOARD SERVICE.** McGee agrees to continue to serve on the Board of  
7 Directors of Organization for a period of not less than three (3) years from the  
8 date of execution of this Agreement. McGee's board service is viewed as a  
lifetime appointment approved in three (3) year increments. Both parties can  
agree to modify her service on the board by mutual agreement.

9 Mr. Brown conceded that each version he signed stated that Mrs. McGee's service on the Board  
10 was a lifetime appointment that could be modified by mutual agreement.

11 24. In dutiful performance of the Retirement and Consulting Agreement, Mrs. McGee  
12 complied, and continues to comply, with the Retirement and Consulting Agreement. She  
13 transitioned and mentored Mr. Brown in his new role as CEO. She spoke with and/or met with him  
14 nearly every single business day for the next two years, and often on weekends. He sought her  
15 advice on grant applications, he asked that she attend media events with him, and he sought her  
16 advice on fundraising and financial issues. Mrs. McGee also met with Miracle Flights staff  
17 members at their request, and at her personal expense, to answer their questions about fundraising,  
18 special events, and finances.

19 25. On February 19, 2016, less than two months after the Retirement and Consulting  
20 Agreement was executed, Miracle Flights' Board adopted a new set of Bylaws. The Directors on  
21 the Board at that time were Mrs. McGee, Dr. Christopher Khorsandi, and Mr. Flynn.

22 26. The Bylaws confirm what was set out in the Employment Agreement and the  
23 Retirement and Consulting Agreement: the parties' intent and agreement that Mrs. McGee would  
24 have a lifetime or permanent seat on Miracle Flights' Board for as long as Mrs. McGee wanted it.  
25 Specifically, Section 4.3 of the Bylaws states as follows: "MIRACLE FLIGHTS founder Ann  
26 McGee shall be entitled at her option to remain a permanent member of the Board of Directors."

27 27. Despite knowing that Mrs. McGee was out of town and unavailable to attend a  
28 meeting of the Board, Miracle Flights caused a letter to be delivered via Federal Express to her

1 home on Friday, March 22, 2019 (the "March 2019 Letter"). The March 2019 Letter purported to  
2 serve as a "notice of meeting and agenda" for a meeting of the Board to be held on March 26, 2019,  
3 just four calendar days after the March 2019 Letter was delivered.

4 28. The March 2019 Letter stated that at the upcoming meeting the Board intended "to  
5 remove Paragraph 4.3 of the Miracle Flights bylaws", the provision that provides Mrs. McGee with  
6 a lifetime appointment to the Board. The March 2019 Letter enclosed an Agenda identifying the  
7 only proposed business items as follows:

- 8 1. Call to Order
- 9 2. **Modify** Section 4.3 of the Miracle Flights Bylaws
- 10 3. Composition of the Board of Directors
- 11 4. Direct CEO to hire the Christiansen Law Firm to negotiate with Ann McGee and her legal counsel to resolve various financial issues.
- 12 5. Adjourn

13 (emphasis added).

14 29. Neither the March 2019 Letter nor the Agenda notified Mrs. McGee that the Board  
15 would be voting to remove her from the Board and/or to not renew her position on the Board for  
16 the next term.

17 30. Minutes of the purported meeting of the Board indicate that the meeting was  
18 telephonic and was called to order "at 6:30 p.m. on Tuesday, March 26, 2018 [sic]." The Board  
19 did not, however, "modify" Section 4.3 of the Bylaws as noticed by the Agenda. Rather, Dr.  
20 Khorsandi made a motion to *delete* Section 4.3 of the Bylaws "in its entirety", which was seconded  
21 by the only other Board member on the phone, Jessica Connell. The purported justification for the  
22 deletion of Section 4.3 was that a lifetime appointment to a board was "uncommon and that every  
23 board member should be elected on merit." A resulting vote tallied the result as a unanimous  
24 approval of the motion.

25 31. Then, Dr. Khorsandi made a motion "to not renew" Mrs. McGee's term on the  
26 Board "and to remove her from the Board". In a similar fashion, Jessica Connell seconded the  
27 motion and the two Board members on the call apparently voted in favor of the motion.

28 32. Dr. Khorsandi and Ms. Connell then re-elected themselves to the Board for a new  
3-year term beginning "with the new fiscal year on May 1, 2019." A final motion directed that the

1 Christiansen Law Firm be hired "to begin negotiations with Ms. McGee", and that motion also  
2 passed unanimously.

3 33. There was no discussion about Mrs. McGee's rights and Miracle Flights' obligations  
4 under the Employment Agreement, as amended, and/or under the Retirement and Consulting  
5 Agreement when the Board voted to remove Mrs. McGee from the Board.

6 34. Nor did Mr. Brown ever send a notice terminating the Employment Agreement, as  
7 amended.

8 35. On April 4, 2019, counsel for Miracle Flights sent correspondence to Mrs. McGee  
9 notifying her that "your term on the Board expired and through a unanimous vote you no longer  
10 are a member of the Board of Directors." He further advised that Miracle Flights was directing  
11 counsel to "facilitate the resolution of several outstanding financial issues."

12 36. Additionally, Miracle Flights' counsel informed Mrs. McGee that "[u]pon final  
13 resolution of these financial matters and all conflicts of interest are resolved, the Board of MF  
14 wants to recognize your outstanding efforts in founding the organization and your 34 years of  
15 service by publicly identifying and promoting you as the first *Miracle Flights International*  
16 *Ambassador*." (emphasis in original). Miracle Flights' counsel confirmed that "the Board of  
17 Directors remains mindful and appreciative of your years of dedication to the organization and its  
18 mission, and they recognize that there would not be a Miracle Flights without you."

19 37. In response, Mrs. McGee maintained that she was still a member of the Board, and  
20 continued to comply with her obligations as a Director and as a consultant under the Retirement  
21 and Consulting Agreement. Mrs. McGee also hired counsel to advocate her positions to Miracle  
22 Flights' counsel and to demand that she be permitted to inspect the corporate records, including  
23 financial records, of Miracle Flights.

24 38. Mrs. McGee never agreed to modify her service on the Board.

25 39. Following months of informal discussions between the parties' counsel through  
26 letters and a face-to-face meeting, Mrs. McGee filed a Complaint against Miracle Flights alleging  
27 claims for declaratory relief, breach of contract, and violation of NRS 82.186. Among other relief  
28 requested, Mrs. McGee prayed for declarations by the Court that she "is entitled to remain as a

Director on the Board of Directors", that the attempted deletion of Section 4.3 of the Bylaws was void and of no effect, and that any actions taken at the March 26, 2019 meeting are void and without legal effect. Mrs. McGee also alleged that the Retirement and Consulting Agreement is a valid contract, that she has performed under the Retirement and Consulting Agreement, and that Miracle Flights' actions are in breach of the Retirement and Consulting Agreement.

40. If any Findings of Fact are properly Conclusions of Law, they shall be treated as though appropriately identified and designated.

### **CONCLUSIONS OF LAW**

1. Mrs. McGee was obligated to show, among other elements, a "likelihood of success on the merits" of *her* claims. *See Sarfo v. Bd. of Med. Examiners*, 134 Nev. Adv. Op. 85, 429 P.3d 650, 652 (2018) (citing *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004) (internal quotation marks omitted)) (stating a party moving for injunctive relief must establish "(1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy.").

2. Mrs. McGee established a likelihood of succeeding on her claim that the vote on March 26, 2019, to remove her was invalid and in breach of the plain language of the Bylaws, the Retirement and Consulting Agreement, and/or the Employment Agreement, as amended.

3. Mrs. McGee also established a likelihood of succeeding on her claim that the plain language of the Bylaws, Employment Agreement, as amended, and the Retirement and Consulting Agreement entitle Mrs. McGee to sit as a Board member until she no longer wishes to serve as a Board member or until the Court's final determination of this issue. *See Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005) ("Generally, when a contract is clear on its face, it 'will be construed from the written language and enforced as written.' The court has no authority to alter the terms of an unambiguous contract."). Accordingly, she is entitled to injunctive relief and/or specific performance requiring Miracle Flights to immediately reinstate Mrs. McGee to the Board. Miracle Flights shall not take any action to remove Mrs. McGee from the Board, pending further Order of the Court.

1           4.       Additionally, Mrs. McGee established a likelihood of succeeding on her claims that  
2       Miracle Flights should be enjoined from taking any action to terminate or alter her retirement  
3       benefits, including, but not limited to, her annuities payments, health insurance, and supplemental  
4       health insurance payments, pending final adjudication of these issues by the Court.

5           5.       The balance of equities and potential irreparable harm favor the granting of Mrs.  
6       McGee's Injunction Motion.

7           6.       Mrs. McGee seeks to compel Miracle Flights to abide by its own contractual  
8       obligations and its Bylaws and, thus, there does not appear to be any manner by which Miracle  
9       Flights can be "wrongfully enjoined or restrained." Thus, Miracle Flights' damages in the event  
10      that this Order is found to have been improperly granted will be minimal or nonexistent. Bond is  
11      therefore set at \$1,000.00. *See* Nev. R. Civ. P. 65(c) (stating that the court has the discretion to fix  
12      the bond "in an amount that the court considers proper.").

13          7.       If said bond is not posted with the Court by 5:00 p.m. PST on 7/2, 2021, this  
14      Order will have no force and effect.

15          8.       If any Conclusions of Law are properly Findings of Fact, they shall be treated as  
16      though appropriately identified and designated.

17               Based on the foregoing Findings of Fact and Conclusions of Law, and good cause appearing,  
18      the Court orders as follows:

19               IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Mrs. McGee's Injunction  
20      Motion is GRANTED;

21               IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the purported removal  
22      of Mrs. McGee from the Board of Directors of Miracle Flights is hereby invalidated;

23               IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Miracle Flights is hereby  
24      directed to immediately reinstate Mrs. McGee to the Board of Directors of Miracle Flights and shall  
25      not take any action to remove Mrs. McGee from the Board of Directors, pending the final  
26      adjudication of these issues by the Court;

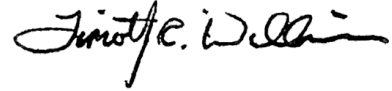
27               IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Miracle Flights is hereby  
28      enjoined from taking any action to terminate or alter Mrs. McGee's retirement benefits, including,

1 but not limited to, her annuities payments, health insurance, and supplemental health insurance  
2 payments, at issue in the Injunction Motion, pending the final adjudication of these issues by the  
3 Court;

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Order binds Miracle  
5 Flights' directors, officers, agents, servants, employees, attorneys, and "other persons who are in  
6 active concert or participation with" these individuals; and

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a bond is set at One  
8 Thousand Dollars (\$1,000.00). If said bond is not posted with the Court by 5:00 p.m. PST on  
9 7/21, 2021, this Order will have no force and effect.

Dated this 13th day of July, 2021



BA8 ACE E593 6623  
Timothy C. Williams  
District Court Judge

N

CHRISTIENSEN LAW OFFICES

Submitted by:

PETERSON BAKER, PLLC

15 By: /s/ Tamara Beatty Peterson  
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*Attorneys for Miracle Flights*

# **EXHIBIT 1**

# **EXHIBIT 1**

## Erin Parcels

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**From:** Kendelea Works <[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)>  
**Sent:** Friday, June 25, 2021 4:45 PM  
**To:** Tammy Peterson  
**Cc:** Nikki Baker; Peter S. Christiansen; Keely Perdue; Jonathan Crain; Erin Parcels  
**Subject:** Re: McGee draft Order

Hi Tammy,

In looking back at the Court's minute order, Judge Williams specifically noted there are issues of fact that may preclude summary judgment. Accordingly, it does not appear that the court conclusively decided the issues of fact before him, but rather made the "limited ruling" that he finds Plaintiff to have shown a reasonable probability of success on the merits. I initially started redlining your proposed order but ultimately, I don't think we can agree that the court conclusively determined the factual findings set forth in your order.

I presume you will not agree so it probably makes more sense for us to just prepare our own competing order. I am happy to discuss if you think a conversation would be helpful. Please let me know your thoughts.

Thanks,

Kendelea

On Jun 24, 2021, at 2:17 PM, Tammy Peterson <[tpeterson@petersonbaker.com](mailto:tpeterson@petersonbaker.com)> wrote:

Kendelea

Please advise.

**Tamara Beatty Peterson, Esq.**  
Peterson Baker, PLLC  
702.786.1001

---

**From:** Kendelea Works <[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)>  
**Sent:** Monday, June 21, 2021 12:49 PM  
**To:** Tammy Peterson <[tpeterson@petersonbaker.com](mailto:tpeterson@petersonbaker.com)>  
**Cc:** Nikki Baker <[nbaker@petersonbaker.com](mailto:nbaker@petersonbaker.com)>; Peter S. Christiansen <[pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)>; Keely Perdue <[keely@christiansenlaw.com](mailto:keely@christiansenlaw.com)>; Jonathan Crain <[jcrain@christiansenlaw.com](mailto:jcrain@christiansenlaw.com)>; Erin Parcels <[eparcells@petersonbaker.com](mailto:eparcells@petersonbaker.com)>  
**Subject:** Re: McGee draft Order

Hi Tammy,

I apologize for the delayed response. I was actually out sick for a couple days last week. We are still reviewing and will have comments and proposed changes to you in the next couple days. Appreciate your follow up and patience.

Thank you,  
Kendelea

On Jun 21, 2021, at 12:47 PM, Tammy Peterson <[tpeterson@petersonbaker.com](mailto:tpeterson@petersonbaker.com)> wrote:

Kendelee

We haven't gotten any response from you on the attached proposed Order or our emails of June 10 or June 15. I realize it's summer and everyone's busy; but we haven't heard anything from you. If you are still reviewing, please let me know. If we don't hear from you today, we'll go ahead and submit this proposed order and just indicate that you did not respond.

Regards  
Tammy

**Tamara Beatty Peterson, Esq.**  
Peterson Baker, PLLC  
702.786.1001

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**From:** Tammy Peterson  
**Sent:** Tuesday, June 15, 2021 9:38 AM  
**To:** Nikki Baker <[nbaker@petersonbaker.com](mailto:nbaker@petersonbaker.com)>; Kendelee Works <[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)>; Peter S. Christiansen <[pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)>; Keely Perdue <[keely@christiansenlaw.com](mailto:keely@christiansenlaw.com)>; Jonathan Crain <[jcrain@christiansenlaw.com](mailto:jcrain@christiansenlaw.com)>  
**Cc:** Erin L. Parcells (<[EParcells@petersonbaker.com](mailto:EParcells@petersonbaker.com)>) <[EParcells@petersonbaker.com](mailto:EParcells@petersonbaker.com)>  
**Subject:** RE: McGee draft Order

Kendelee

We haven't heard from you on the attached proposed Order. I'm attaching it again for your convenience, along with a copy of the Court's Minute order.

Please indicate whether you approve the Order and if we may affix your electronic signature.

Regards  
Tammy

**Tamara Beatty Peterson, Esq.**  
Peterson Baker, PLLC  
702.786.1001

---

**From:** Nikki Baker <[nbaker@petersonbaker.com](mailto:nbaker@petersonbaker.com)>  
**Sent:** Thursday, June 10, 2021 5:39 PM  
**To:** Kendelee Works <[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)>; Peter S. Christiansen <[pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)>; Keely Perdue <[keely@christiansenlaw.com](mailto:keely@christiansenlaw.com)>; Jonathan Crain <[jcrain@christiansenlaw.com](mailto:jcrain@christiansenlaw.com)>  
**Cc:** Tammy Peterson <[tpeterson@petersonbaker.com](mailto:tpeterson@petersonbaker.com)>  
**Subject:** McGee draft Order

Hi Kendeleee,

Attached hereto is a draft Order Granting Plaintiff's Motion for Preliminary Injunction. Please let us know if you have any suggested revisions or comments.

Thank you,

Nikki

**Nikki L. Baker, Esq.**

Peterson Baker, PLLC

701 S. 7<sup>th</sup> Street

Las Vegas, NV 89101

702.786.1001

[nbaker@PetersonBaker.com](mailto:nbaker@PetersonBaker.com)

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney-privileged and confidential, and intended only for the use of the individual or entity named above. If you have received this email in error, please notify us immediately by calling (702) 786-1001 and delete the message. Thank you.

<Order granting PI v2.docx><2021.05.24 (McGee) Minute Order (2).pdf>

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Ann McGee, Plaintiff(s)

CASE NO: A-19-799634-B

7 vs.

DEPT. NO. Department 16

8 Miracle Flights, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/13/2021

15 Whitney Barrett

wbarrett@christiansenlaw.com

16 R. Todd Terry

tterry@christiansenlaw.com

17 Jonathan Crain

jcrain@christiansenlaw.com

18 Tamara Peterson

tpeterson@petersonbaker.com

19 Nikki Baker

nbaker@petersonbaker.com

20 Erin Parcells

eparcells@petersonbaker.com

21 Chandi Melton

chandi@christiansenlaw.com

22 Esther Barrios Sandoval

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23 Aileen Bencomo

ab@christiansenlaw.com

24 PETER CHRISTIANSEN, ESQ.

pete@christiansenlaw.com

25 KENDELEE WORKS, ESQ.

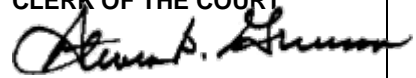
kworks@christiansenlaw.com

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KEELY PERDUE, ESQ.  
David Astur

keely@christiansenlaw.com  
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Facsimile: 702.786.1002

*Attorneys for Ann and Bill McGee*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ANN MCGEE, a Nevada resident,  
  
Plaintiff,

v.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,  
  
Defendant.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,

Counterclaimant,

v.

ANN MCGEE, an individual; WILLIAM  
MCGEE, an individual; DOES I through X,  
inclusive; and ROE BUSINESS  
ENTITIES, I through XX, inclusive,

Counterdefendants.

Case No.: A-19-799634-B  
Dept. No.: XVI

**NOTICE OF ENTRY OF ORDER  
GRANTING PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

1 PLEASE TAKE NOTICE that an ORDER GRANTING PLAINTIFF'S MOTION FOR  
2 PRELIMINARY INJUNCTION ("Order") was entered on July 13, 2021. A copy of said Order is  
3 attached hereto.

4 Dated this 14<sup>th</sup> day of July, 2021.

5 PETERSON BAKER, PLLC

6  
7 By: /s/ Tamara Beatty Peterson  
8 TAMARA BEATTY PETERSON, ESQ., Bar No. 5218  
9 tpeterson@petersonbaker.com  
10 NIKKI L. BAKER, ESQ., Bar No. 6562  
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13 Las Vegas, NV 89101  
14 Telephone: 702.786.1001  
15 Facsimile: 702.786.1002

16 *Attorneys for Ann and Bill McGee*  
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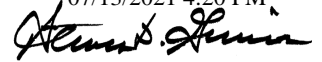
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Peterson Baker, PLLC, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 14<sup>th</sup> day of July, 2021, to the following:

PETER S. CHRISTIANSEN, ESQ.  
pete@christiansenlaw.com  
KENDELEE L. WORKS, ESQ.  
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KEELY PERDUE, ESQ.  
keely@christiansenlaw.com  
CHRISTIANSEN TRIAL LAWYERS  
710 S. 7th Street  
Las Vegas, Nevada 89101

*Attorneys for Defendant Miracle Flights*

/s/ Clarise Wilkins  
An employee of Peterson Baker, PLLC

  
CLERK OF THE COURT

**ORDR**

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Telephone: 702.786.1001  
Facsimile: 702.786.1002

*Attorneys for Ann and Bill McGee*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ANN MCGEE, a Nevada resident,

Plaintiff,

v.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,

Defendant.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,

Counterclaimant,

v.

ANN MCGEE, an individual; WILLIAM  
MCGEE, an individual; DOES I through X,  
inclusive; and ROE BUSINESS  
ENTITIES, I through XX, inclusive,

Counterdefendants.

Case No.: A-19-799634-B

Dept. No.: XVI

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION**

Plaintiff/Counterdefendant Ann McGee's ("Mrs. McGee") Motion for Preliminary Injunction filed on October 31, 2019 (the "Injunction Motion") originally came before this Honorable Court on December 4, 2019. Pursuant to a request from Defendant Miracle Flights ("Miracle Flights"), an evidentiary hearing on the Injunction Motion took place on January 13, 14, 21, & 23, 2020; October 9, 2020; December 10 & 11, 2020; and January 27, 2021; with closing argument held on March 17, 2021. Tamara Beatty Peterson, Esq., and Nikki L. Baker, Esq., of the

PETERSON BAKER, PLLC  
701 S. 7th Street  
Las Vegas, NV 89101  
702.786.1001

1 law firm of Peterson Baker, PLLC, appeared on behalf of Mrs. McGee. Mrs. Ann McGee was also  
2 present. Peter S. Christiansen, Esq., Kendele L. Works, Esq., and Keely A. Perdue, Esq., of the  
3 law firm Christiansen Law Offices, appeared on behalf of Miracle Flights. Mark Brown ("Mr.  
4 Brown"), a representative from Miracle Flights, was also present.

5 Having considered the pleadings and papers on file herein and the evidence admitted during  
6 the evidentiary hearing, having heard and considered the testimony of the witnesses called to testify,  
7 and having considered the oral and written arguments of counsel, the Court makes the following  
8 Findings of Fact and Conclusions of Law:

9 **FINDINGS OF FACT**

10 1. Mrs. McGee formed The Medical Flight Team, Inc., a Nevada nonprofit  
11 corporation, on or about April 30, 1985. The organization was later renamed to The Angel Planes,  
12 Inc., then to Miracle Flights for Kids, and later as simply Miracle Flights.

13 2. Since its inception, the purpose of Miracle Flights has been "[t]o provide health and  
14 welfare flight services through financial assistance to children of low to moderate income families  
15 who must travel far away from home to receive necessary medical care."

16 3. For the first four years, Mrs. McGee worked as Miracle Flights' CEO without pay,  
17 ensuring that any donations were going towards programming needs and not administrative costs.  
18 Using and leveraging her background as a teacher of children with disabilities, with a Masters in  
19 Early Childhood Education, and her personal passion and dedication to facilitating the care and  
20 treatment of sick children, Mrs. McGee took this fledgling organization and grew it to epic global  
21 proportions.

22 4. In June 1989, four years after the formation of Miracle Flights, Mrs. McGee<sup>1</sup> and  
23 Miracle Flights entered into an Employment Agreement. There were several key components of  
24 the Employment Agreement:

- 25 • For the first time, Miracle Flights agreed to pay Mrs. McGee a salary for her work;  
26 • Miracle Flights agreed to "procure major medical coverage and disability insurance"  
27 for Mrs. McGee;

28 <sup>1</sup> Mrs. McGee was formerly known as Ann Mishoulam.

- Miracle Flights agreed to maintain a permanent seat on the Board of Directors (the "Board") for Mrs. McGee;
- Mrs. McGee would remain as a consultant to Miracle Flights following termination of the Employment Agreement, unless she was dismissed for cause;
- Mrs. McGee's pay as a consultant to Miracle Flights following retirement would be at a rate of 50% of her annual base salary; and
- Miracle Flights would provide Mrs. McGee with a pension plan.

Among other items, the Board seat was a material provision of the Employment Agreement, as Mrs. McGee had already expended enormous personal sacrifice for the infant organization and remained fully committed to its mission and vision. Mrs. McGee wanted to ensure that she could continue to participate in strategic decisions of the organization beyond such a time as she no longer desired to participate its day-to-day management.

5. Mrs. McGee would not have signed the Employment Agreement if it did not have her right to a permanent Board seat memorialized therein.

6. Mr. Brown admitted under oath that Mrs. McGee's Employment Agreement gives her a permanent seat on the Board. He also conceded that her Employment Agreement does not provide any qualifying language to her right to a permanent seat on the Board.

7. In October 1998, the Employment Agreement was amended (the "1998 Amendment"). The 1998 Amendment had certain key provisions:

- A salary review would be conducted annually for Mrs. McGee by the Board, with a minimum raise, based upon "at least the minimum salary as shown in an independent study of similar salaried positions in the country"; and
- Miracle Flights agreed to provide Mrs. McGee with "a fully funded pension plan".

The 1998 Amendment did not modify the provision of the Employment Agreement regarding the permanent Board seat.

8. In January 2007, the Employment Agreement was again amended (the "2007 Addendum"). The 2007 Addendum addressed two issues: (1) a retirement benefit for Mrs. McGee, once she retired; and (2) additional deferred compensation meant to reimburse Mrs. McGee for the years she served with little or no compensation.

9. The retirement benefit provided that Mrs. McGee would receive an annual benefit equivalent to 75% of her base salary as a pension, once she retired (the "Retirement Benefit").

10. Additionally, there was another term in the 2007 Addendum that addressed Mrs. McGee's many years of service to the organization for which she received little to no compensation. This deferred compensation provision was intended to reimburse Mrs. McGee for those years, and provided that Miracle Flights would purchase Deferred Compensation Annuities:

Employer recognizes that as founder of Miracle Flights for Kids employee served for many years with little or no compensation or pension benefits and agrees to:

- a. Purchase an annuity at \$50,000 annually beginning fiscal year 2006/2007 to be owned by Miracle Flights For Kids and transferred to employee on date of retirement. . . .

11. In late 2015, Mrs. McGee decided to retire at the age of 68.

12. In December 2015, the Board held a meeting and discussed the terms of a new contract for Mrs. McGee. The Board determined, at the time, that Mrs. McGee was ideally situated to mentor and to transition the position to Mr. Brown so that he could leverage his skills for the organization.

13. As recorded in the Minutes, the Board approved the Retirement and Consulting Agreement between Miracle Flights and Mrs. McGee, and directed Mr. Brown to finalize and execute the contract with Mrs. McGee: "Discussion was held and agreed upon for the terms and conditions of a consulting contract for Ann McGee. . . . The board directed Mr. Brown to finalize and execute the contract with Ms. McGee."

14. On or about January 1, 2016, and in compliance with the Board's directives, Mr. Brown presented the Retirement and Consulting Agreement to Mrs. McGee for signature. Mr. Brown executed at least three versions of the Retirement and Consulting Agreement on behalf of Miracle Flights as its CEO.

15. The express language of the Retirement and Consulting Agreement provides that Mr. Brown, as signatory for Miracle Flights, had the authority to enter into the contract:

. . . In addition, Organization represents that it has analyzed the compensation and related consideration elements, determining this Agreement and all of its terms reasonable, including compensation, as specifically set forth herein. **Organization represents to McGee that this information has been reviewed by its full Board of Directors which, by action of the full Board of Directors, has determined its terms to be reasonable and which further voted to accept its terms and authorized the Executive Director to execute on its behalf.**

(emphasis added).

16. In an effort to ensure the continued viability of Miracle Flights, Mrs. McGee made significant monetary concessions in the Retirement and Consulting Agreement. At the outset, she gave up her final year's raise, which significantly affected her retirement earnings. She also agreed to be bound by a non-compete provision, a non-disclosure provision, and a release of any and all prior claims or liabilities against Miracle Flights.

17. Additionally, as detailed in her Employment Agreement, she was entitled to remain as a consultant following her retirement and be paid the amount of 50% of her annual base salary as CEO for her consulting services. But the Retirement and Consulting Agreement asked her to spend an initial term of two years "to share the knowledge she has accumulated" but do so without pay. Once that initial term was completed, then Mrs. McGee was to be paid \$50,000 per year, for the next five years, for her work as a consultant.

18. The Retirement and Consulting Agreement also addressed the 75% Retirement Benefit outlined in her Employment Agreement. Specifically, Mrs. McGee gave up the term that required her to receive 75% of her final salary as an annual Retirement Benefit, and instead agreed to accept distribution from retirement annuities—purchased by Miracle Flights for this specific purpose—as full compensation of her retirement pay. The Retirement Annuities are identified on Exhibit A of the Retirement and Consulting Agreement.

19. The Retirement and Consulting Agreement also specifically addressed Mrs. McGee's health insurance. The agreement does not otherwise define health insurance, and does not differentiate between Medicare or supplemental health insurance.

20. Reflective of the intent of the parties under the Retirement and Consulting Agreement, Mrs. McGee has been reimbursed for both Medicare and supplemental health insurance since her retirement in 2015.

21. Miracle Flights has been making the annuities payments since Mrs. McGee retired.

22. Miracle Flights has never claimed that Mrs. McGee is not entitled to any retirement benefits or health insurance benefits. Indeed, Mr. Brown conceded that Mrs. McGee is entitled to retirement and insurance benefits. Miracle Flights does, however, contend that Mrs. McGee is

1 being overpaid on the annuities and that she is not entitled to reimbursement of supplemental or  
2 secondary health insurance.

3 23. The Retirement and Consulting Agreement again confirmed Mrs. McGee's lifetime  
4 position on the Board, with the ability to modify the service only by mutual agreement. Section 6  
5 of the Retirement and Consulting Agreement states as follows:

6 **BOARD SERVICE.** McGee agrees to continue to serve on the Board of  
7 Directors of Organization for a period of not less than three (3) years from the  
8 date of execution of this Agreement. McGee's board service is viewed as a  
lifetime appointment approved in three (3) year increments. Both parties can  
agree to modify her service on the board by mutual agreement.

9 Mr. Brown conceded that each version he signed stated that Mrs. McGee's service on the Board  
10 was a lifetime appointment that could be modified by mutual agreement.

11 24. In dutiful performance of the Retirement and Consulting Agreement, Mrs. McGee  
12 complied, and continues to comply, with the Retirement and Consulting Agreement. She  
13 transitioned and mentored Mr. Brown in his new role as CEO. She spoke with and/or met with him  
14 nearly every single business day for the next two years, and often on weekends. He sought her  
15 advice on grant applications, he asked that she attend media events with him, and he sought her  
16 advice on fundraising and financial issues. Mrs. McGee also met with Miracle Flights staff  
17 members at their request, and at her personal expense, to answer their questions about fundraising,  
18 special events, and finances.

19 25. On February 19, 2016, less than two months after the Retirement and Consulting  
20 Agreement was executed, Miracle Flights' Board adopted a new set of Bylaws. The Directors on  
21 the Board at that time were Mrs. McGee, Dr. Christopher Khorsandi, and Mr. Flynn.

22 26. The Bylaws confirm what was set out in the Employment Agreement and the  
23 Retirement and Consulting Agreement: the parties' intent and agreement that Mrs. McGee would  
24 have a lifetime or permanent seat on Miracle Flights' Board for as long as Mrs. McGee wanted it.  
25 Specifically, Section 4.3 of the Bylaws states as follows: "MIRACLE FLIGHTS founder Ann  
26 McGee shall be entitled at her option to remain a permanent member of the Board of Directors."

27 27. Despite knowing that Mrs. McGee was out of town and unavailable to attend a  
28 meeting of the Board, Miracle Flights caused a letter to be delivered via Federal Express to her

1 home on Friday, March 22, 2019 (the "March 2019 Letter"). The March 2019 Letter purported to  
2 serve as a "notice of meeting and agenda" for a meeting of the Board to be held on March 26, 2019,  
3 just four calendar days after the March 2019 Letter was delivered.

4 28. The March 2019 Letter stated that at the upcoming meeting the Board intended "to  
5 remove Paragraph 4.3 of the Miracle Flights bylaws", the provision that provides Mrs. McGee with  
6 a lifetime appointment to the Board. The March 2019 Letter enclosed an Agenda identifying the  
7 only proposed business items as follows:

- 8 1. Call to Order
- 9 2. **Modify** Section 4.3 of the Miracle Flights Bylaws
- 10 3. Composition of the Board of Directors
- 11 4. Direct CEO to hire the Christiansen Law Firm to negotiate with Ann McGee and her legal counsel to resolve various financial issues.
- 12 5. Adjourn

13 (emphasis added).

14 29. Neither the March 2019 Letter nor the Agenda notified Mrs. McGee that the Board  
15 would be voting to remove her from the Board and/or to not renew her position on the Board for  
16 the next term.

17 30. Minutes of the purported meeting of the Board indicate that the meeting was  
18 telephonic and was called to order "at 6:30 p.m. on Tuesday, March 26, 2018 [sic]." The Board  
19 did not, however, "modify" Section 4.3 of the Bylaws as noticed by the Agenda. Rather, Dr.  
20 Khorsandi made a motion to *delete* Section 4.3 of the Bylaws "in its entirety", which was seconded  
21 by the only other Board member on the phone, Jessica Connell. The purported justification for the  
22 deletion of Section 4.3 was that a lifetime appointment to a board was "uncommon and that every  
23 board member should be elected on merit." A resulting vote tallied the result as a unanimous  
24 approval of the motion.

25 31. Then, Dr. Khorsandi made a motion "to not renew" Mrs. McGee's term on the  
26 Board "and to remove her from the Board". In a similar fashion, Jessica Connell seconded the  
27 motion and the two Board members on the call apparently voted in favor of the motion.

28 32. Dr. Khorsandi and Ms. Connell then re-elected themselves to the Board for a new  
3-year term beginning "with the new fiscal year on May 1, 2019." A final motion directed that the

1 Christiansen Law Firm be hired "to begin negotiations with Ms. McGee", and that motion also  
2 passed unanimously.

3 33. There was no discussion about Mrs. McGee's rights and Miracle Flights' obligations  
4 under the Employment Agreement, as amended, and/or under the Retirement and Consulting  
5 Agreement when the Board voted to remove Mrs. McGee from the Board.

6 34. Nor did Mr. Brown ever send a notice terminating the Employment Agreement, as  
7 amended.

8 35. On April 4, 2019, counsel for Miracle Flights sent correspondence to Mrs. McGee  
9 notifying her that "your term on the Board expired and through a unanimous vote you no longer  
10 are a member of the Board of Directors." He further advised that Miracle Flights was directing  
11 counsel to "facilitate the resolution of several outstanding financial issues."

12 36. Additionally, Miracle Flights' counsel informed Mrs. McGee that "[u]pon final  
13 resolution of these financial matters and all conflicts of interest are resolved, the Board of MF  
14 wants to recognize your outstanding efforts in founding the organization and your 34 years of  
15 service by publicly identifying and promoting you as the first *Miracle Flights International*  
16 *Ambassador*." (emphasis in original). Miracle Flights' counsel confirmed that "the Board of  
17 Directors remains mindful and appreciative of your years of dedication to the organization and its  
18 mission, and they recognize that there would not be a Miracle Flights without you."

19 37. In response, Mrs. McGee maintained that she was still a member of the Board, and  
20 continued to comply with her obligations as a Director and as a consultant under the Retirement  
21 and Consulting Agreement. Mrs. McGee also hired counsel to advocate her positions to Miracle  
22 Flights' counsel and to demand that she be permitted to inspect the corporate records, including  
23 financial records, of Miracle Flights.

24 38. Mrs. McGee never agreed to modify her service on the Board.

25 39. Following months of informal discussions between the parties' counsel through  
26 letters and a face-to-face meeting, Mrs. McGee filed a Complaint against Miracle Flights alleging  
27 claims for declaratory relief, breach of contract, and violation of NRS 82.186. Among other relief  
28 requested, Mrs. McGee prayed for declarations by the Court that she "is entitled to remain as a

Director on the Board of Directors", that the attempted deletion of Section 4.3 of the Bylaws was void and of no effect, and that any actions taken at the March 26, 2019 meeting are void and without legal effect. Mrs. McGee also alleged that the Retirement and Consulting Agreement is a valid contract, that she has performed under the Retirement and Consulting Agreement, and that Miracle Flights' actions are in breach of the Retirement and Consulting Agreement.

40. If any Findings of Fact are properly Conclusions of Law, they shall be treated as though appropriately identified and designated.

### **CONCLUSIONS OF LAW**

1. Mrs. McGee was obligated to show, among other elements, a "likelihood of success on the merits" of *her* claims. *See Sarfo v. Bd. of Med. Examiners*, 134 Nev. Adv. Op. 85, 429 P.3d 650, 652 (2018) (citing *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004) (internal quotation marks omitted)) (stating a party moving for injunctive relief must establish "(1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy.").

2. Mrs. McGee established a likelihood of succeeding on her claim that the vote on March 26, 2019, to remove her was invalid and in breach of the plain language of the Bylaws, the Retirement and Consulting Agreement, and/or the Employment Agreement, as amended.

3. Mrs. McGee also established a likelihood of succeeding on her claim that the plain language of the Bylaws, Employment Agreement, as amended, and the Retirement and Consulting Agreement entitle Mrs. McGee to sit as a Board member until she no longer wishes to serve as a Board member or until the Court's final determination of this issue. *See Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005) ("Generally, when a contract is clear on its face, it 'will be construed from the written language and enforced as written.' The court has no authority to alter the terms of an unambiguous contract."). Accordingly, she is entitled to injunctive relief and/or specific performance requiring Miracle Flights to immediately reinstate Mrs. McGee to the Board. Miracle Flights shall not take any action to remove Mrs. McGee from the Board, pending further Order of the Court.

1           4.       Additionally, Mrs. McGee established a likelihood of succeeding on her claims that  
2       Miracle Flights should be enjoined from taking any action to terminate or alter her retirement  
3       benefits, including, but not limited to, her annuities payments, health insurance, and supplemental  
4       health insurance payments, pending final adjudication of these issues by the Court.

5           5.       The balance of equities and potential irreparable harm favor the granting of Mrs.  
6       McGee's Injunction Motion.

7           6.       Mrs. McGee seeks to compel Miracle Flights to abide by its own contractual  
8       obligations and its Bylaws and, thus, there does not appear to be any manner by which Miracle  
9       Flights can be "wrongfully enjoined or restrained." Thus, Miracle Flights' damages in the event  
10      that this Order is found to have been improperly granted will be minimal or nonexistent. Bond is  
11      therefore set at \$1,000.00. *See* Nev. R. Civ. P. 65(c) (stating that the court has the discretion to fix  
12      the bond "in an amount that the court considers proper.").

13          7.       If said bond is not posted with the Court by 5:00 p.m. PST on 7/2, 2021, this  
14      Order will have no force and effect.

15          8.       If any Conclusions of Law are properly Findings of Fact, they shall be treated as  
16      though appropriately identified and designated.

17          Based on the foregoing Findings of Fact and Conclusions of Law, and good cause appearing,  
18      the Court orders as follows:

19          IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Mrs. McGee's Injunction  
20      Motion is GRANTED;

21          IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the purported removal  
22      of Mrs. McGee from the Board of Directors of Miracle Flights is hereby invalidated;

23          IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Miracle Flights is hereby  
24      directed to immediately reinstate Mrs. McGee to the Board of Directors of Miracle Flights and shall  
25      not take any action to remove Mrs. McGee from the Board of Directors, pending the final  
26      adjudication of these issues by the Court;

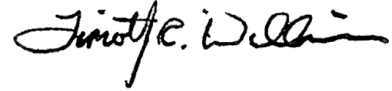
27          IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Miracle Flights is hereby  
28      enjoined from taking any action to terminate or alter Mrs. McGee's retirement benefits, including,

1 but not limited to, her annuities payments, health insurance, and supplemental health insurance  
2 payments, at issue in the Injunction Motion, pending the final adjudication of these issues by the  
3 Court;

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Order binds Miracle  
5 Flights' directors, officers, agents, servants, employees, attorneys, and "other persons who are in  
6 active concert or participation with" these individuals; and

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a bond is set at One  
8 Thousand Dollars (\$1,000.00). If said bond is not posted with the Court by 5:00 p.m. PST on  
9 7/21, 2021, this Order will have no force and effect.

Dated this 13th day of July, 2021



BA8 ACE E593 6623  
Timothy C. Williams  
District Court Judge

N

CHRISTIENSEN LAW OFFICES

Submitted by:

PETERSON BAKER, PLLC

15 By: /s/ Tamara Beatty Peterson  
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*Attorneys for Miracle Flights*

# **EXHIBIT 1**

# **EXHIBIT 1**

## Erin Parcels

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**From:** Kendelea Works <[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)>  
**Sent:** Friday, June 25, 2021 4:45 PM  
**To:** Tammy Peterson  
**Cc:** Nikki Baker; Peter S. Christiansen; Keely Perdue; Jonathan Crain; Erin Parcels  
**Subject:** Re: McGee draft Order

Hi Tammy,

In looking back at the Court's minute order, Judge Williams specifically noted there are issues of fact that may preclude summary judgment. Accordingly, it does not appear that the court conclusively decided the issues of fact before him, but rather made the "limited ruling" that he finds Plaintiff to have shown a reasonable probability of success on the merits. I initially started redlining your proposed order but ultimately, I don't think we can agree that the court conclusively determined the factual findings set forth in your order.

I presume you will not agree so it probably makes more sense for us to just prepare our own competing order. I am happy to discuss if you think a conversation would be helpful. Please let me know your thoughts.

Thanks,

Kendelea

On Jun 24, 2021, at 2:17 PM, Tammy Peterson <[tpeterson@petersonbaker.com](mailto:tpeterson@petersonbaker.com)> wrote:

Kendelea

Please advise.

**Tamara Beatty Peterson, Esq.**  
Peterson Baker, PLLC  
702.786.1001

---

**From:** Kendelea Works <[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)>  
**Sent:** Monday, June 21, 2021 12:49 PM  
**To:** Tammy Peterson <[tpeterson@petersonbaker.com](mailto:tpeterson@petersonbaker.com)>  
**Cc:** Nikki Baker <[nbaker@petersonbaker.com](mailto:nbaker@petersonbaker.com)>; Peter S. Christiansen <[pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)>; Keely Perdue <[keely@christiansenlaw.com](mailto:keely@christiansenlaw.com)>; Jonathan Crain <[jcrain@christiansenlaw.com](mailto:jcrain@christiansenlaw.com)>; Erin Parcels <[eparcells@petersonbaker.com](mailto:eparcells@petersonbaker.com)>  
**Subject:** Re: McGee draft Order

Hi Tammy,

I apologize for the delayed response. I was actually out sick for a couple days last week. We are still reviewing and will have comments and proposed changes to you in the next couple days. Appreciate your follow up and patience.

Thank you,  
Kendelea

On Jun 21, 2021, at 12:47 PM, Tammy Peterson <[tpeterson@petersonbaker.com](mailto:tpeterson@petersonbaker.com)> wrote:

Kendelee

We haven't gotten any response from you on the attached proposed Order or our emails of June 10 or June 15. I realize it's summer and everyone's busy; but we haven't heard anything from you. If you are still reviewing, please let me know. If we don't hear from you today, we'll go ahead and submit this proposed order and just indicate that you did not respond.

Regards  
Tammy

**Tamara Beatty Peterson, Esq.**  
Peterson Baker, PLLC  
702.786.1001

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**From:** Tammy Peterson  
**Sent:** Tuesday, June 15, 2021 9:38 AM  
**To:** Nikki Baker <[nbaker@petersonbaker.com](mailto:nbaker@petersonbaker.com)>; Kendelee Works <[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)>; Peter S. Christiansen <[pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)>; Keely Perdue <[keely@christiansenlaw.com](mailto:keely@christiansenlaw.com)>; Jonathan Crain <[jcrain@christiansenlaw.com](mailto:jcrain@christiansenlaw.com)>  
**Cc:** Erin L. Parcells ([EParcells@petersonbaker.com](mailto:EParcells@petersonbaker.com)) <[EParcells@petersonbaker.com](mailto:EParcells@petersonbaker.com)>  
**Subject:** RE: McGee draft Order

Kendelee

We haven't heard from you on the attached proposed Order. I'm attaching it again for your convenience, along with a copy of the Court's Minute order.

Please indicate whether you approve the Order and if we may affix your electronic signature.

Regards  
Tammy

**Tamara Beatty Peterson, Esq.**  
Peterson Baker, PLLC  
702.786.1001

---

**From:** Nikki Baker <[nbaker@petersonbaker.com](mailto:nbaker@petersonbaker.com)>  
**Sent:** Thursday, June 10, 2021 5:39 PM  
**To:** Kendelee Works <[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)>; Peter S. Christiansen <[pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)>; Keely Perdue <[keely@christiansenlaw.com](mailto:keely@christiansenlaw.com)>; Jonathan Crain <[jcrain@christiansenlaw.com](mailto:jcrain@christiansenlaw.com)>  
**Cc:** Tammy Peterson <[tpeterson@petersonbaker.com](mailto:tpeterson@petersonbaker.com)>  
**Subject:** McGee draft Order

Hi Kendelee,

Attached hereto is a draft Order Granting Plaintiff's Motion for Preliminary Injunction. Please let us know if you have any suggested revisions or comments.

Thank you,

Nikki

**Nikki L. Baker, Esq.**

Peterson Baker, PLLC

701 S. 7<sup>th</sup> Street

Las Vegas, NV 89101

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<Order granting PI v2.docx><2021.05.24 (McGee) Minute Order (2).pdf>

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Ann McGee, Plaintiff(s)

CASE NO: A-19-799634-B

7 vs.

DEPT. NO. Department 16

8 Miracle Flights, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/13/2021

15 Whitney Barrett

wbarrett@christiansenlaw.com

16 R. Todd Terry

tterry@christiansenlaw.com

17 Jonathan Crain

jcrain@christiansenlaw.com

18 Tamara Peterson

tpeterson@petersonbaker.com

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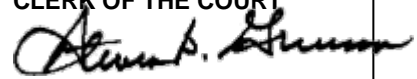
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ANN MCGEE, a Nevada resident,

Plaintiff,

vs.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,

Defendants/Counterclaimant,

vs.

ANN MCGEE, an individual; WILLIAM  
MCGEE, an individual; DOES I through X,  
inclusive; and ROE BUSINESS ENTITIES, I  
through XX, inclusive

Counterdefendants.

CASE NO.: A-19-799634-B

DEPT NO.: 16

**DEFENDANT/COUNTERCLAIMANT  
MIRACLE FLIGHTS' MOTION FOR  
RECONSIDERATION OF ORDER  
GRANTING PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION**

**[HEARING REQUESTED]**

Defendant/Counterclaimant Miracle Flights, by and through its undersigned counsel, hereby moves this Court to reconsider its Order Granting Plaintiff's Motion for Preliminary Injunction dated July 13, 2021, reinstating Ms. McGee to the Board of Directors of Miracle Flights.

CHRISTIANSEN  
— TRIAL LAWYERS —



1 This Motion is based upon the pleadings and papers on file in this action, the Points and  
2 Authorities set forth herein, and argument to be made by counsel at the time of the hearing.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I.**

5 **INTRODUCTION AND RELEVANT BACKGROUND**

6 This case arises out of a dispute between Ann McGee and Miracle Flights (“MF”)  
7 regarding the compensation and benefits packages to which Ms. McGee and her husband, William  
8 (Bill) McGee, are entitled. On October 31, 2019, Ms. McGee filed a motion for preliminary  
9 injunction asking that the Court immediately restore her position on MF’s Board of Directors  
10 (“Board”) and further that MF be required to continue paying her compensation and benefits  
11 package, including a retirement and consulting agreement, which MF asserts is invalid because it  
12 lacked the required Board approval. MF opposed the motion for preliminary injunction, and, at  
13 the request of MF, the Court heard eight days of evidentiary hearing proceedings on January 13,  
14 14, 21 and 23, 2020, October 9, 2020, December 10 and 11, 2020, and January 27, 2021, with  
15 closing argument held on March 17, 2021.

16 On May 24, 2021, this Court issued a Minute Order granting Ms. McGee’s motion for  
17 preliminary injunction, reinstating her on to the Board of Directors and enjoining MF from taking  
18 any actions to terminate or alter the annuity and insurance payments to Ms. McGee pending final  
19 adjudication by the Court. *See* Minute Order, on file herein. This Court specifically stated that its  
20 ruling “is very limited” and “there are issues of material fact that may preclude granting summary  
21 judgment.” *Id.* Notwithstanding the Court’s Minute Order, Ms. McGee submitted a proposed  
22 Order Granting Plaintiff’s Motion for Preliminary Injunction (“Order”) to the Court consisting of  
23 erroneous factual findings on all claims, which the Court never conclusively decided. Ms.  
24 McGee’s Order was ultimately signed by the Court and electronically filed on July 13, 2021. *See*  
25 Order, on file herein.

26 MF now moves for reconsideration of the final Order dated July 13, 2021, limited to the  
27 issue of Ms. McGee’s reinstatement to the Board. The Order reinstating Ms. McGee to the Board  
28

1 is erroneous as it does not serve the ends of justice and should be reconsidered for the following  
2 reasons:

- 3 1) The final Order consists of erroneous factual findings which the Court never made;
- 4 2) Ms. McGee made no showing of irreparable harm should she not be reinstated to the  
5 Board;
- 6 3) The Court failed to adequately consider the balance of hardships which favors MF  
7 because of the disruption that will be caused by reinstating Ms. McGee to the Board  
8 in contrast with the passage of time since her removal; and
- 9 4) Ms. McGee's permanent seat on the Board is void as a matter of public policy.

10 **II.**

11 **SUMMARY OF RELEVANT EVIDENCE**  
12 **PRESENTED AT EVIDENTIARY HEARING**

13 The evidence adduced at the hearing establishes Ms. McGee and her puppeteer and then-  
14 Director Keith Flynn unilaterally amended MF's Bylaws, giving Ms. McGee a permanent seat on  
15 the Board. On December 22, 2014, Ms. McGee sent an email to Ms. Moreno, informing her that  
16 she was updating the bylaws and would need her help the following day to get them in order.  
17 Exhibit 177. Mr. Holpuch from Holo testified that the electronic file of MF's 2015 Bylaws  
18 (Exhibit 176) was created on December 23, 2014, and last modified on March 19, 2015. Oct. 9,  
19 2020 Trans. at 36:05-37:05. Between February 18 and 25, 2015, Ms. McGee and Mr. Flynn voted  
20 to approve MF's 2015 Bylaws. *See* Exhibits 156 and 157. The last time MF's Bylaws were  
21 amended before 2015 was in 2011. Oct. 9, 2020 Trans. at 70:13-24. Noticeably missing from the  
22 2011 Bylaws is any provision giving Ms. McGee a permanent seat on the Board. Exhibit 175B.  
23 Thus, it is clear the Bylaw provision giving Ms. McGee a permanent seat on the Board was added  
24 during a time in which Ms. McGee and Mr. Flynn were the only Board members.

25 The only other sources on which Ms. McGee relies in support of her request for a  
26 permanent seat on the Board is the Retirement and Consulting Agreement ("RCA"), or in the  
27 alternative, her 1989 Employment Agreement. However, the RCA is unenforceable because it  
28 never received final Board approval. Newly discovered emails sent by Ms. McGee during the

relevant timeframe further corroborate this. Specifically, Ms. McGee contends that at the Board of Directors' Meeting on December 9, 2015, the Board purportedly approved the RCA and directed Mr. Brown to finalize and execute the agreement with Ms. McGee. However, five days after the meeting, on December 14, 2015, Ms. McGee sent Mr. Brown an email proposing additional changes to the draft RCA for Mr. Brown to review prior to the Board's review:

Hi Mark,

*After having a few days to review the contract I have made some changes that I would like for you to add to your 1st draft so that I can give to Dr. K and Keith hopefully tomorrow.*

- Replace "the day and year hereinafter set forth by and" with "December 1, 2015".
- 1. PURPOSE - after "entitled" add "for the retirement portion"
- Page 2 - 8th line - delete "as well as any other monies claimed to be due, and consulting work as hereinafter described."
- Page 2 - 2nd paragraph - line 2 - change "waiving all other rights." to "for retirement."
- 3. HEALTH INSURANCE - line 2 - after "securing health insurance" add "including drugs, vision and dental."
- 4. CONSULTING - 2nd paragraph - 4th line - after "any" add "reasonable and normal"

Line 5 - after "related t" add "setting up"

- 5. SUBSEQUENT WORK- line 2 - after "24 months" add "December 1, 2017"
- 10. KNOWING AND VOL EXECUTION - ( typos in line 3)
- Line 4 - after "this agreement" add "paid for by MF"

Thanks for your help. I can pick this up in the morning and hand deliver to them so that we can move it along. *They will need time to discuss the changes.*

Let me know if you will have for me [sic] to pick it up.

See Email dated December 14, 2015, attached hereto as **Exhibit A** (emphasis added). This email confirms that, after the December 9, 2015 Meeting, the parties were still negotiating the terms of the RCA and further that Ms. McGee understood and acknowledged the final RCA would still need to go back before the Board for final approval to be valid.

Nevertheless, Ms. McGee's reliance on the RCA or the 1989 Employment Agreement for a permanent Board seat is misplaced because both agreements included a termination provision.

1 In particular, the 1989 Employment Agreement included a 30-day termination provision allowing  
2 MF to terminate the agreement for cause upon thirty days written notice. *See* Exhibit 6. Similarly,  
3 at least one version of the RCA (of which there are at least four (4) different signed versions) also  
4 included a termination clause, allowing either party to terminate the RCA upon one hundred  
5 twenty (120) days' notice. Exhibit 116A.<sup>1</sup>

6 After Ms. McGee retired and during the IRS audit, Mr. Brown discovered Ms. McGee's  
7 fraud and breaches of her fiduciary duty, as the focus of the IRS audit was directed towards Ms.  
8 McGee's salary and pension. Oct. 9, 2020 Trans. at 58:06-16, 60:13-25, 61:22-62:13; Dec. 10,  
9 2020 Trans. at 13:09-21, 19:23-20:04; *see also* Exhibit 111. At the advice of Mr. Copilevitz and  
10 in accordance with his fiduciary duty and ethical obligations, Mr. Brown relayed his findings to  
11 the Board, including Ms. McGee. Oct. 9, 2020 Trans. at 59:15-60:11. This prompted outrage  
12 from Ms. McGee as she turned on Mr. Brown and became defensive. *Id.* at 67:02-09; Dec. 10,  
13 2020 Trans. at 12:01-10; Exhibit 110.

14 Given these financial issues and the ongoing IRS audit, the Board was concerned Ms.  
15 McGee's prior actions had placed the organization in severe jeopardy of losing its status as a non-  
16 profit corporation under Nevada law and its tax-exemption under Federal law. *Id.* at 138:19-22.  
17 The Board attempted to resolve these issues directly with Ms. McGee at prior Board meetings to  
18 no avail. *Id.* at 138:23-139:08. Ms. McGee refused to work with the Board to come to a resolution  
19 as to how best to proceed and instead, resorted to yelling, making accusations that she was being  
20 victimized and that Mr. Brown turned the Board against her, finger pointing, slamming her books,  
21 and walking out of meetings. *Id.* at 144:12-245:19.

22 True to form, Ms. McGee continued to disrupt the function of the Board and demanded  
23 more money from MF while MF was in the midst of trying to resolve financial issues related to  
24 her compensation. *Id.* at 145:06-19. At one meeting, Ms. McGee raised an issue of a tax penalty  
25 she received and demanded MF pay her penalty, blaming MF for the penalty she received. *Id.* At  
26

27  
28 <sup>1</sup> The Court's Minute Order is silent as to which agreement(s) it relied upon to find Ms. McGee  
was entitled to a seat on the Board of Directors.

1 nearly every opportunity, Ms. McGee became disruptive and she would derail and redirect the  
2 meeting to issues related to her own financial benefit. *Id.* at 148:02-149:09. If things did not go  
3 her way, Ms. McGee would storm out of meetings and refuse to sign off on the minutes. Oct. 9,  
4 2020 Trans. at 85:20-87:18; *see also* Exhibit 160. Ms. McGee’s disruptive behavior severely  
5 hindered the Board’s ability to conduct MF’s normal business in its mission to help children,  
6 which lead to her removal for cause. Oct. 9, 2020 Trans. at 62:14-63:16.

7 In accordance with Section 4.14 of MF’s Bylaws, Ms. McGee was removed from the  
8 Board for cause by a unanimous vote at a Meeting held on March 26, 2019. Exhibit 151. Section  
9 4.14 of MF’s Bylaws provides as follows:

10 Section 4.14 Any Director may be removed with or without cause at any time  
11 during their term by the affirmative vote of all other members of  
12 the Board of Directors at any meeting, if notice of intention to act  
on such matter shall have been given in the notice calling such  
meeting.

13 Exhibit 145. On March 21, 2019, Board Chairman Dr. Chris Khorsandi and Board Member  
14 Jessica Connell notified Ms. McGee, via written correspondence sent by FedEx overnight, that  
15 a telephonic meeting of the Board of Directors was scheduled to take place on March 26, 2019,  
16 and provided a copy the agenda. Exhibit 146. The Board explained their intent to remove Section  
17 4.3 of the Bylaws, which provides Ms. McGee with a lifetime appointment to the Board. *Id.* The  
18 items on the agenda were, *inter alia*, “Modify Section 4.3 of the Miracle Flights Bylaws” and  
19 “Composition of the Board of Directors.” *Id.* On March 22, 2019, MF’s Senior Executive  
20 Assistant Vanessa Moreno sent an email to Ms. McGee, confirming Ms. McGee received the  
21 documents that were sent to her home via FedEx and again included a copy of the  
22 correspondence, agenda and call-in information. Exhibit 147.

23 Additionally, Mr. Brown testified that, prior to the meeting, he and Ms. McGee had a  
24 very specific and direct telephone conversation about the upcoming meeting. Dec. 11, 2020  
25 Trans. at 30:09-31:01. During that conversation, Mr. Brown forewarned Ms. McGee that if she  
26 did not participate in the meeting or voluntarily step away from the Board, the Board would be  
27 voting specifically to remove her, as well as amending the Bylaws. *Id.*

On March 26, 2019, the telephonic meeting of the Board was called to order at 6:30 p.m. with Dr. Khorsandi and Ms. Connell present. Exhibit 151. Also present were CEO Mark Brown, attorney Errol Copilevitz, who acted as secretary, and attorney Kendele L. Works. *Id.* Dr. Khorsandi requested a 5-minute delay to give Ms. McGee additional time to join the call. *Id.* At 6:35 p.m., Dr. Khorsandi determined that a quorum was present and moved forward with the agenda. *Id.* Ms. McGee did not join the call to participate in the meeting. *Id.*

During the meeting, the Board discussed Section 4.3 of the Bylaws and whether it is consistent with industry best practices. *Id.* Relying on the advice of counsel, the Board decided this section was uncommon and that every member should be elected on merit. *Id.*; *see also* Jan. 14, 2020 Trans. at 26:19-27:12. The Board voted unanimously to delete Section 4.3 in its entirety, to not renew Ms. McGee’s term on the Board, and to remove Ms. McGee from the Board. Exhibit 151.

### III.

#### LEGAL ARGUMENT

##### A. LEGAL STANDARD FOR RECONSIDERATION.

Pursuant to Eighth Judicial District Court Rule (“EDCR”) 2.24(b):

A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 14 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order . . . .

*Id.*

This Court has the inherit authority to reconsider its prior orders. *Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975). Reconsideration is appropriate where “substantially different evidence is subsequently introduced or the decision is clearly erroneous.” *Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). For sufficient cause shown, a court may amend, correct, resettle, modify or vacate an order previously made and entered on a motion. *Trail*, 91 Nev. at 403, 536 P.2d at 1027.

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**B. THE ORDER REINSTATING MS. MCGEE TO THE BOARD IS ERRONEOUS AS IT DOES NOT SERVE THE ENDS OF JUSTICE AND SHOULD BE RECONSIDERED.**

Under NRCP 65, a party seeking injunctive relief must show “a likelihood of success on the merits of their case and that they will suffer irreparable harm without preliminary relief.” *Shores v. Global Experience Specialists, Inc.*, 134 Nev. Adv. Op. 61, 422, P.3d 1238, 1241 (2018). This is a substantial burden for the moving party, as “[i]njunctive relief is extraordinary relief” requiring the plaintiff to articulate irreparable harm “in specific terms.” *Dept. of Conversation & Natural Resources, Div. of Water Resources, v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). The moving party bears the burden of proof in such proceedings on all elements of injunctive relief. *See Finkel v. Cashman Professional, Inc.*, 128 Nev. 68, 72, 270 P.3d 1259, 1262 (2012). Where compensatory damages are an adequate remedy, there is no irreparable harm and an injunction is inappropriate under NRCP 65. *See Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. Adv. Op. 38, 351 P.3d 720, 722 (2015).

Where, as here, a plaintiff seeks mandatory injunctive relief “in the sense that a trial on the merits could not practically reverse a preliminary decision enjoining [defensive measures] ... the Motion is subject to heightened scrutiny and the injunction requested should not issue unless the facts and the law clearly favor” the plaintiff. *Hilton Hotels Corp. v. ITT Corp.*, 978 F. Supp. 1342, 1345 (D. Nev. 1997). There is “a serious question as to the propriety of granting preliminary injunctive relief” that thus “compel[s] [a] party to pay money or to take some other action to satisfy [the] rights” of another party, as opposed to “injunctive relief to preserve the status quo,” because ordinarily the former “would require a trial upon the merits.” *Arnoff v. Katleman*, 75 Nev. 424, 432-34, 345 P.2d 221, 225-26 (1959). It is therefore a well-settled principle of equity that a mandatory injunction ““is particularly disfavored,”” *Malo, Inc. v. Alta Mere Indus., Inc.*, No. 02:06-CV-01449-KJD-GWF, 2007 WL 1703454, at \*2 (D. Nev. June 11, 2007) (citation omitted) — and “is rarely granted.” *Alvarez v. Eden Twp. Hosp. Dist.*, 191 Cal. App. 2d 309, 312 (1961). Courts of equity should accordingly deny such relief unless the merits are not ““doubtful”” and ““extreme or very serious damage will result”” if the requested relief is denied. *Malo*, 2007 WL

1 1703454, at \*2 & n.4 (citing *Anderson v. United States*, 612 F.2d 1112, 1115 (9th Cir. 1980);  
2 *Martinez v. Matthews*, 544 F.2d 1233, 1243 (5th Cir. 1977)).

3 **1. The Final Order Consists of Erroneous Factual Findings Which the Court Never**  
4 **Conclusively Decided.**

5 The Court’s Minute Order specifically noted there are issues of material fact that may  
6 preclude granting summary judgment. *See* Minute Order dated May 24, 2021, on file herein.  
7 Accordingly, the Court never conclusively decided the issues of fact before it, but rather made  
8 the limited ruling that it finds Plaintiff to have shown a reasonable probability of success on the  
9 merits. *Id.* Notwithstanding, Ms. McGee went beyond the Court’s Minute Order and submitted a  
10 proposed Order consisting of erroneous factual findings, which the Court never made.

11 For example, Ms. McGee’s Order included the following “findings of fact”:

12 12. In December 2015, the Board held a meeting and discussed the terms of a  
13 new contract for Mrs. McGee. The Board determined, at the time, that Mrs. McGee  
14 was ideally situated to mentor and to transition the position to Mr. Brown so that  
15 he could leverage his skills for the organization.

16 13. As recorded in the Minutes, the Board approved the Retirement and  
17 Consulting Agreement between Miracle Flights and Mrs. McGee, and directed Mr.  
18 Brown to finalize and execute the contract with Mrs. McGee: “Discussion was  
19 held and agreed upon for the terms and conditions of a consulting contract for Ann  
20 McGee. . . . The board directed Mr. Brown to finalize and execute the contract  
21 with Ms. McGee.”

22 14. On or about January 1, 2016, and in compliance with the Board’s  
23 directives, Mr. Brown presented the Retirement and Consulting Agreement to  
24 Mrs. McGee for signature. Mr. Brown executed at least three versions of the  
25 Retirement and Consulting Agreement on behalf of Miracle Flights as its CEO.

26 Order at ¶¶ 12-14. However, these purported “facts” were genuinely disputed at the hearing by  
27 both parties, as it has always been MF’s position the RCA is unenforceable because it never  
28 received final Board approval. Nowhere in the December 9, 2015, Minutes does it indicate a vote  
was actually taken to approve any consulting contract for Ms. McGee because no vote was taken.  
Exhibit 115; *see also* Jan. 14, 2020 Trans. at 133:06-10. Further, Mr. Brown testified he only  
signed the RCA because he was under intense pressure from Ms. McGee and Mr. Flynn, both of  
whom were his bosses. Dec. 10, 2020 Trans. at 73:14-17. Three months after the Board  
purportedly approved the RCA, on March 9, 2016, Mr. Brown received an email from Mr. Flynn,

wherein Mr. Flynn pressured Mr. Brown to finalize the RCA and insisted he bring the Board a finalized contract for review despite Mr. Brown's concerns regarding the agreement:

Mark, what is status with Annie's consulting contract?

It appears you might be dragging your feet and as a member of the Board this is not acceptable to me. Getting this contract put together is not option for you, it is a Board directive.

***I recognize the concerns you raised during our call awhile back about conflicts of interest because she needs to report to you and be accountable to you and she has [sic] also is a Board member.*** Also, I understand how you feel that there needs to be real work done and not just have her collect a check. I think that where you are taking the organization her value to you is limited however, she deserves this consulting arrangement for recognition of her service to this organization for 30 years.

***Regardless, quite frankly as CEO these are not issues of concern to you right now, these are issues that will be addressed by the Board. Once you finalize the contract as directed and bring it back to us, Dr. Khorsandi and I will discuss these issues you raise and others and work through them prior to us voting on the contract.***

Please update me at your earliest convenience.

Exhibit 118 (emphasis added). After the RCA was signed, Ms. McGee and Mr. Brown had many conversations regarding the RCA still needing final Board approval to be valid, which Ms. McGee understood and acknowledged. Dec. 10, 2020 Trans. at 73:18-74:06.

Additionally, Ms. McGee's Order misrepresents the manner and timing in which MF's Bylaws were amended giving her a permanent seat on the Board. Specifically, Ms. McGee's Order states as follows:

25. On February 19, 2016, less than two months after the Retirement and Consulting Agreement was executed, Miracle Flights' Board adopted a new set of Bylaws. The Directors on the Board at that time were Mrs. McGee, Dr. Christopher Khorsandi, and Mr. Flynn.

26. The Bylaws confirm what was set out in the Employment Agreement and the Retirement and Consulting Agreement: the parties' intent and agreement that Mrs. McGee would have a lifetime or permanent seat on Miracle Flights' Board for as long as Mrs. McGee wanted it. Specifically, Section 4.3 of the Bylaws states as follows: "MIRACLE FLIGHTS found Ann McGee shall be entitled at her option to remain a permanent member of the Board of Directors."

Order at ¶¶ 25-26. This is patently false. The Bylaw provision giving Ms. McGee a permanent seat on the Board was added prior to 2016 during a time in which Ms. McGee and Mr. Flynn were

1 the only Board members. As discussed above, the evidence presented at the hearing establishes  
2 Ms. McGee and Mr. Flynn unilaterally amended MF’s Bylaws giving Ms. McGee a permanent  
3 seat on the Board between December of 2014 and February of 2015—prior to the date on which  
4 Dr. Khorsandi’s term on the Board took effect. Such evidence was unrefuted by Ms. McGee.

5 Ms. McGee’s Order further states, “In an effort to ensure the continued viability of  
6 Miracle Flights, Mrs. McGee made significant monetary concessions in the Retirement and  
7 Consulting Agreement.” Order at ¶ 16. Not only was that purported “fact” not proven by any  
8 evidence at the hearing, to the contrary, no monetary concessions on the part of Ms. McGee would  
9 ever be necessary to ensure the continued viability of MF given MF’s financial resources.

10 While the Court had the opportunity to find a reasonable probability of success on the  
11 merits for a number of the foregoing issues, the Court explicitly acknowledged “there are issues  
12 of material fact that may preclude granting summary judgment.” *See* Minute Order dated May  
13 24, 2021, on file herein. Based on the language in the Court’s Minute Order, the Court could not  
14 have made any of these findings because such findings would be tantamount to a grant of  
15 summary judgment.

16 **2. Ms. McGee Made No Showing of Irreparable Harm Should She Not be**  
17 **Reinstated to the Board.**

18 Ms. McGee failed to demonstrate she will suffer irreparable injury by virtue of MF’s  
19 conduct in removing Section 4.3 of the Bylaws which provided Ms. McGee with a “lifetime”  
20 appointment to the Board, and subsequently voting for her removal. *See Thirteen South Ltd. v.*  
21 *Summit Village, Inc.*, 109 Nev. 1218, 1220, 866 P.2d 258, 259 (1993). To satisfy this burden, Ms.  
22 McGee must demonstrate real and concrete injury or the threat thereof. *Berryman v. Int’l Broth.*  
23 *of Elec. Workers*, 82 Nev. 277, 280, 416 P.2d 387, 388-89 (1966). The injury cannot be  
24 speculative or premature. *Caribbean Marine Serv. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th  
25 Cir. 1988). Under Nevada law, a preliminary injunction should not issue if the alleged irreparable  
26 injury is not immediate. *See Dangberg Holdings Nevada, L.L.C. v. Douglas County*, 115 Nev.  
27 129, 146, 978 P.2d 311, 321 (1999) (explaining that there must be a showing that the “injury to  
28 the moving party will be immediate, certain, and great” (quoting *Rhodes Mining Co. v. Belleville*

1 *Placer Mining Co.*, 32 Nev. 230, 239, 106 P. 561, 563 (1910)); accord *In re Aquilia Inc.*, 805  
2 A.2d 184, 194 (Del. Ch. 2002).

3 The loss of a board position does not constitute irreparable harm. *Open Tech. Fund v.*  
4 *Pack*, 470 F. Supp. 3d 8, 29 (D.D.C. 2020). In holding that a director will not suffer irreparable  
5 harm from the loss of a board position in the absence of preliminary relief, the United States  
6 District Court for the District of Columbia in *Open Tech. Fund* relied on the United States’  
7 Supreme Court rule from *Sampson v. Murray*, 415 U.S. 61, 92 n.68, 94 S.Ct. 937 (1974) that loss  
8 of employment is not irreparable harm except in a “genuinely extraordinary situation”:

9 . . . unlike in the typical case involving loss of employment, here no loss of income  
10 is on the line, . . . but in *Sampson* itself, the Supreme Court established that the  
11 possibility of non-monetary harm is not, alone, sufficient to justify deviation from  
12 the *Sampson* rule, as the Court rejected a claim that humiliation and damages to  
13 reputation associated with loss of employment justified preliminary relief. *See* 415  
14 U.S. at 91, 94 S.Ct. 937. Nor does it matter that the individual plaintiffs held high-  
15 level positions, sitting on the boards of directors at the Networks. Courts have  
16 consistently applied the *Sampson* rule regardless of the type of employment at  
17 issue. *See, e.g., English v. Trump*, 279 F. Supp. 3d 307, 334 (D.D.C. 2018) (Acting  
18 Director of Consumer Financial Protection Bureau); *Burns v. GAO Empl. Fed.*  
19 *Credit Union*, No. 88-3424, 1988 WL 134925, at \*1–2 (D.D.C. Dec. 2, 1988)  
20 (President of Board of Directors of U.S. General Accounting Office Employees  
21 Federal Credit Union); *EEOC v. City of Janesville*, 630 F.2d 1254, 1256 (7th Cir.  
22 1980) (Chief of Police); *Levesque v. State of Maine*, 587 F.2d 78, 79 (1st Cir. 1978)  
23 (Maine Commissioner of Manpower).

24 *Id.* Particularly relevant here, the Court further acknowledged:

25 . . . the individual plaintiffs point to no imminent risk that their former board  
26 positions will disappear—only that their replacements will assume their former  
27 positions. Should plaintiffs ultimately prevail, they can be restored to the  
28 Networks’ board of directors, and thus they will not suffer irreparable harm in the  
absence of preliminary relief. *See Murray*, 415 U.S. at 90, 94 S.Ct. 937 (“The  
possibility that adequate compensatory or other corrective relief will be available  
at a later date, in the ordinary course of litigation, weighs heavily against a claim  
of irreparable harm.”).

*Id.* at 30-31.

Like the plaintiffs in *Open Tech. Fund*, Ms. McGee failed to show she will suffer  
irreparable harm from the loss of her board position in the absence of preliminary relief. Her  
former position was assumed by Joel Jarvis, and there is no risk that her former board position

will disappear. Dec. 11, 2020 Trans. at 27:04-14. The Articles of Incorporation do not prescribe a number of Directors and the Bylaws at Section 4.4 do not limit the number of Directors but rather mandate that there be at least three in number. Moreover, Ms. McGee has been off the Board for nearly two and a half years. Thus, she certainly cannot show the threat of any immediate personal harm. Should Ms. McGee prevail at trial, she can be restored to MF's Board at that time.

Courts have recognized the objective of a preliminary injunction is to maintain pending trial the status quo presently existing, not the status quo before the motion. *See Dubin v. Muchnick*, 438 N.Y.S.2d 920, 924 (N.Y. Sup. Ct. 1981), modified on other grounds, 447 N.Y.S.2d 472 (N.Y. App. Div. 1st Dept. 1982). On appeal in *Dubin v. Muchnick*, 447 N.Y.S.2d 472, 473 (N.Y. App. Div. 1st Dept. 1982), the court reversed the underlying decision granting the plaintiff's motion for a preliminary injunction because there were specific charges of breach by plaintiff of his fiduciary obligations as an officer of the corporation, which raised a question as to whether the plaintiff should be permitted to continue to exercise his control over the business of the corporation. *Id.* In light of such charges, the appellate court held that the plaintiff did not show his entitlement to the extraordinary equitable relief of a preliminary injunction. *Id.*

Here, Ms. McGee was removed from the Board for cause in March of 2019—nearly two and a half years ago. Ms. McGee made no showing of any particularized harm to either herself or the charity should she not be reinstated to the Board. Nor can she given the length of time that has passed since her removal. Regardless of whether Ms. McGee continues to serve on the Board, Ms. McGee will not be compensated any more, or any less, and her other remaining retirement benefits remain the same. Without Ms. McGee's presence on the Board, MF has continued to function properly and serve its mission by providing flights to families for medical travel.

Additionally, this case involves allegations of egregious misconduct on the part of Ms. McGee. While on the Board of Directors, Ms. McGee abused her confidential relationship with MF by engaging in fraud and self-dealing, placing her own interests above that of MF—all in breach of her fiduciary duties. More specifically, while acting as the only Board member, Ms. McGee approved her own salary using overinflated data and transferred money to her personal financial advisor without Board knowledge or approval. Given these allegations, this Court

1 simply cannot reinstate her to the Board without great detriment to the ability of the charity to  
2 function in a productive manner that serves its mission. It is for exactly this type of reason that  
3 mandatory preliminary relief, which goes well beyond simply maintaining the status quo, is  
4 particularly disfavored, and should not be issued unless the facts and law clearly favor the moving  
5 party. *Anderson v. United States*, 612 F.2d 1112, 1114 (quoting *Martinez v. Mathews*, 544 F.2d  
6 1233, 1243 (5th Cir. 1976)). Thus, Ms. McGee failed to make the necessary showing to entitle  
7 her to a preliminary injunction reinstating her to the Board.

8 **3. The Court Failed to Adequately Consider the Balance of Hardships Which**  
9 **Favors MF because of the Disruption That Will Be Caused by Reinstating Ms.**  
10 **McGee to the Board in Contrast with the Passage of Time Since Her Removal.**

11 The Court failed to adequately consider that reinstating Ms. McGee to the Board would  
12 be inequitable considering the ongoing litigation between Ms. McGee and MF. The balance of  
13 hardships weighs decisively against a mandatory injunction. “Where . . . the effect of the  
14 injunction would be disastrous to an established and legitimate business through its destruction  
15 or interruption in whole or in part, strong and convincing proof of right on the part of the  
16 complainant, and of the urgency of his case, is necessary to justify an exercise of the injunctive  
17 power.” *Rhodes Mining Co v. Belleville Placer Mining Co.*, 32 Nev. 230, 106 P. 561, 562 (1910).  
18 As a non-profit organization, MF relies on grants and donations to further its mission. Reinstating  
19 Ms. McGee to the Board without regard for the numerous breaches of her fiduciary duties and  
20 multi-year fraud she perpetrated on the organization could damage the reputation of MF which is  
21 essential to its fundraising success.

22 Ms. McGee’s own testimony reveals the reason she wants to be on the Board is to disrupt  
23 the current operation of the charity by attempting to remove Mr. Brown as CEO. When asked  
24 why she want she wants to be on the Board, Ms. McGee responded, “I want to be on the board of  
25 directors until we can identify the right CEO to take the organization forward, and I was – and  
26 when I feel comfortable that – that we do have the right CEO in place, then I would consider  
27 giving up my seat . . . .” Jan. 13, 2020 Trans. at 104:24-105:05. It is apparent Ms. McGee has a  
28 personal motivation of pursuing a vendetta against Mr. Brown, rather than furthering the mission  
of the charity to help children.

1           Additionally, Ms. McGee’s claims against Miracle Flights constitute an actual, direct  
2 conflict of interest. A director should not be placed in a position where her own individual  
3 interests could interfere with the performance of her fiduciary duties to the organization.  
4 Reinstating Ms. McGee to the Board would, as a practical matter, allow her to access records and  
5 communications specifically related to this litigation, to which she normally would not have  
6 access. It would indeed obliterate the attorney-client and work product privileges MF would  
7 otherwise have. This is, to the say the least, a substantial hardship imposed on MF. On the other  
8 hand, Ms. McGee does not face any significant hardship if she were not reinstated to the Board  
9 pending the outcome of this litigation. The balance of hardships therefore favors MF.

10           **4. Ms. McGee’s Permanent Seat on the Board is Void as a Matter of Public Policy.**

11           The Court’s Order effectively concludes a charity cannot amend its Bylaws and further  
12 that a permanent or lifetime Board position must always be enforced regardless of the manner in  
13 which the director abused her authority and trust of her position as a director by engaging in fraud  
14 and self-dealing, placing her own self-interests above that of the organization – all in breach of  
15 her fiduciary duties. Such a conclusion is clearly erroneous. Fundamental principles of non-profit  
16 governance must be balanced and reconciled with contract law. It is axiomatic there must be a  
17 procedure by which an organization can remove a director in cases where, such as here, the  
18 director breaches her fiduciary duties and engages in fraud.

19           In seeking a permanent seat on the Board, Ms. McGee relied on the RCA, or in the  
20 alternative, her 1989 Employment Agreement, as well as MF’s Bylaws. It is uncontroverted that  
21 Ms. McGee and Mr. Flynn amended the Bylaws giving Ms. McGee a permanent seat on the Board  
22 during a time in which they were the only two Board members. Ms. McGee presented no evidence  
23 a real Board actually voted in favor of any Bylaw provision giving Ms. McGee a permanent seat  
24 on the Board. When the current Board finally began to see the error of Ms. McGee’s ways, it  
25 properly amended the Bylaws to delete the provision affording Ms. McGee a permanent seat on  
26 the Board and removed Ms. McGee for cause.

27           Moreover, that Ms. McGee’s retirement agreement and earlier employment agreement  
28 contained a contractual provision giving her a permanent seat on the Board does not mean it is

forever golden. Public policy renounces contractual provisions that are detrimental to public interest. It is well settled that a court will not enforce a contract provision in violation of public policy. *State Farm Mut. Auto. Ins. Co. v. Hinkle*, 488 P.2d 1151 (Nev. 1971).

Numerous courts have recognized that a director may be discharged for cause, notwithstanding a contractual obligation to continue the director in office. *Application of Burkin*, 1 N.Y.2d 570, 154 N.Y.S.2d 898, 136 N.E.2d 862 (1956); *Fells v. Katz*, 256 N.Y. 67, 72, 175 N.E. 516, 517 (N.Y. 1931); *Tremsky v. Green*, Sup., 106 N.Y.S.2d 572, 574 (Sup. Ct. 1951); *In re Roosevelt Leather Hand Bag Co.*, 68 N.Y.S.2d 735, 736 (Sup. Ct. 1947); *Dubin*, 438 N.Y.S.2d 920; *see also Davidson v. James*, 172 A.D.2d 323, 324, 568 N.Y.S.2d 397, 398 (1991). In *Dubin*, the court noted, “The law is clear that provisions of an agreement guaranteeing a minority stockholder’s continued participation in control as an officer and director will not protect a discharge for cause.” 438 N.Y.S.2d at 923. The court reiterated the underlying public policy concerns:

“ . . . An agreement among shareholders whereby the directors are bereft of their powers to discharge an unfaithful employee of the corporation, is illegal as against public policy. (citation) The agreement of the stockholders to continue a man in the directorate must be construed as an obligation to retain him only so long as he keeps the agreement on his part faithfully to act as a trustee for the stockholders.”

*Id.* (citing *Fells v. Katz*, 256 N.Y. 67, 72, 175 N.E. 516, 517 (N.Y. 1931); *Redmond v. Redmond*, 42 A.D.2d 542, 345 N.Y.S.2d 12 (1973); *Tremsky v. Green*, Sup., 106 N.Y.S.2d 572 (Sup. Ct. 1951); *see Puro v. Puro*, 89 Misc.2d 856, 863, 393 N.Y.S.2d 633 (Sup. Ct. 1976)). If this applies to minority stockholders who have a financial interest at stake, it stands to reason that it should apply with more force to a charity, such as MF, where the director has no financial interest at stake whatsoever.

Courts have likewise recognized that “a corporation possesses the inherent power to remove a member, officer or director for cause, regardless of the presence of a provision in the charter or by-laws providing for such removal.” *Grace v. Grace Inst.*, 19 N.Y.2d 307, 313, 226 N.E.2d 531 (1967)(citing *People ex rel. Manice v. Powell*, 201 N. Y. 194 (1911); *Fells v. Katz*, 256 N. Y. 67 (1931); *Matter of Koch*, 257 N. Y. 318 (1931); *Bockman v. American Inst. of*

1 *Decorators*, 7 A D 2d 495, affd. 7 N Y 2d 850 (1959); *Abberger v. Kulp*, 156 Misc. 210. (1935)).  
 2 In *Grace*, the petitioner was a member of the board of trustees of a charity who was removed  
 3 from his position as a life member after embarking on a course of conduct involving the charity  
 4 in litigation for the purpose of harassing the charity and its members. *Id.* at 314. The petitioner  
 5 challenged his removal from his position as a life member. *Id.* at 314-15. The appellate court  
 6 concluded the petitioner’s removal was proper, acknowledging that a lifetime position could not  
 7 have been intended to be retained regardless of the manner in which the member acted and abused  
 8 his trust. *Id.* The court further acknowledged that with a lifetime position comes an implied  
 9 condition to faithfully serve the charity. *Id.* Once the member breaches that condition and engages  
 10 in activities that obstruct and interfere with the operation of the organization and the purposes for  
 11 which it was created, the member may be removed. *Id.*

12 Where an agreement for an individual to continue as a director exists along with a bylaw  
 13 provision permitting the removal of a director with or without cause, if possible, both the  
 14 agreement and bylaw should be construed together to give effect to both. *Tremsky v. Green*, 106  
 15 N.Y.S.2d 572, 575 (Sup. Ct. 1951). While “a fair construction of the agreement” compels the  
 16 conclusion that the bylaw provision with respect to removal without cause shall be superseded  
 17 otherwise the agreement would be meaningless, “the same cannot be said with respect to the  
 18 inherent right of the stockholders and directors, as expressed in the bylaw provision, to remove  
 19 directors and officers for cause.” *Id.* “The agreement can be fairly and consistently construed as  
 20 permitting the survival of this provision in the bylaws. In fact, a contrary construction would  
 21 make the agreement inoperative as against public policy.” *Id.*

22 As a member of the Board of Directors, Ms. McGee stood as a fiduciary to MF, which  
 23 required a duty of good faith, honesty and full disclosure. Ms. McGee’s fiduciary relationship  
 24 with MF also imparted upon her duties of care and loyalty, which required Ms. McGee to act in  
 25 the utmost good faith without any self-interest or self-dealing and maintain MF’s best interest  
 26 over anyone else’s interests.

27 The totality of evidence presented in this case demonstrates Ms. McGee, while on the  
 28 Board of Directors, abused her confidential, fiduciary relationship with MF by engaging in fraud

1 and self-dealing, placing her own self-interests above that of MF. While acting as the only Board  
2 member, Ms. McGee fraudulently inflated her salary and that of her husband, Mr. McGee, which  
3 ultimately resulted in MF paying excessive retirement benefits. MF estimates the total  
4 overpayments and excess benefits exceed \$1,126,834.00 through October of 2020. Additionally,  
5 Ms. McGee transferred a total of \$30-million to her personal financial advisor and MF Board  
6 Member, Keith Flynn, without Board approval. Under these circumstances, the fundamental legal  
7 principles of equity and fairness underlying our public policy underscore the importance of  
8 allowing an organization to remove a director when she has failed to meet her fiduciary duties.

9 Consistent with Section 4.14 of MF's Bylaw's, Ms. McGee's removal for cause was  
10 permitted under the Bylaws. It is erroneous to conclude that Ms. McGee cannot be removed for  
11 cause simply because her agreement and the Bylaws give her a permanent seat on the Board, as  
12 such a conclusion would render Section 4.14 of MF's Bylaws completely meaningless. MF's  
13 Bylaws and Ms. McGee's agreements must be construed together to give effect to both. *See*  
14 *Caldwell v. Consol. Realty & Mgmt. Co.*, 99 Nev. 635, 639, 668 P.2d 284, 287 (1983)("[Courts]  
15 should not interpret contracts so as to render its provisions meaningless. . . . If at all possible,  
16 [courts] should give effect to every word in the contract." (internal citations omitted)).


17 **IV.**

18 **CONCLUSION**

19 Based on the foregoing facts, law, and analysis, Defendant/Counterclaimant Miracle  
20 Flights respectfully requests that this Court reconsider its Order Granting Plaintiff's Motion for  
21 Preliminary Injunction and modify it by denying Ms. McGee's request to be reinstated to the  
22 Board.

23 Dated this 27th day of July, 2021.

24 CHRISTIANSEN TRIAL LAWYERS

25 By   
26 PETER S. CHRISTIANSEN, ESQ.  
27 KENDELEE L. WORKS, ESQ.  
28 KEELY A. PERDUE, ESQ.  
*Attorneys for Miracle Flights*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN TRIAL LAWYERS, and that on this 27th day of July, 2021 I caused the foregoing document entitled **DEFENDANT/COUNTERCLAIMANT MIRACLE FLIGHTS' MOTION FOR RECONSIDERATION OF ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.



\_\_\_\_\_  
An employee of Christiansen Trial Lawyers

EXHIBIT A

EXHIBIT A

**From:** Annie McGee <[anniemcgee@cox.net](mailto:anniemcgee@cox.net)>  
**Date:** December 14, 2015 at 8:43:29 PM PST  
**To:** Mark Brown <[mark@loyaltystudio.com](mailto:mark@loyaltystudio.com)>  
**Subject:** Consulting Contract

Hi, Mark.

After having a few days to review the contract I have made some changes that I would like for you to add to your 1st draft so that I can give it to Dr. K and Keith, hopefully tomorrow.

- Replace "the day and year hereinafter set forth by and" with "December 1, 2015".
- 1. PURPOSE - after "entitled" add "for the retirement portion"
- Page 2 - 8th line - delete "as well as any other monies claimed to be due, and consulting work as hereinafter described."
- Page 2 - 2nd paragraph - line 2 - change "waiving all other rights." to "for retirement."
- 3. HEALTH INSURANCE - line 2 - after "securing health insurance" add "including drugs, vision and dental."
- 4. CONSULTING - 2nd paragraph - 4th line - after "any" add "reasonable and normal"  
Line 5 - after "related t" add "setting up"
- 5. SUBSEQUENT WORK- line 2 - after "24 months" add "December 1, 2017"
- 10. KNOWING AND VOL EXECUTION - ( typos in line 3)  
Line 4 - after "this agreement" add "paid for by MF"

Thanks for your help. I can pick this up in the morning and hand deliver to them so that we can move it along. They will need time to discuss the changes.

Let me know if you will have for me to pick up.

Sent from my iPad

*Heather S. Linn*

CLERK OF THE COURT

**ODM**

TAMARA BEATTY PETERSON, ESQ., Bar No. 5218

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*Attorneys for Ann and Bill McGee*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ANN MCGEE, a Nevada resident,

Plaintiff,

v.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,

Defendant.

Case No.: A-19-799634-B

Dept. No.: XVI

**ORDER DENYING  
DEFENDANT/COUNTERCLAIMANT  
MIRACLE FLIGHTS' MOTION FOR  
RECONSIDERATION OF ORDER  
GRANTING PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION**

Hearing Date: October 7, 2021

Hearing Time: 9:00 a.m.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,

Counterclaimant,

v.

ANN MCGEE, an individual; WILLIAM  
MCGEE, an individual; DOES I through X,  
inclusive; and ROE BUSINESS  
ENTITIES, I through XX, inclusive,

Counterdefendants.

Defendant/Counterclaimant Miracle Flights' Motion for Reconsideration of Order Granting Plaintiff's Motion for Preliminary Injunction filed on July 27, 2021 (the "Motion for Reconsideration") came before this Honorable Court for hearing on October 7, 2021. Tamara

1 Beatty Peterson, Esq., of the law firm of Peterson Baker, PLLC, appeared on behalf of  
2 Plaintiff/Counterdefendant Ann McGee. Peter S. Christiansen, Esq., Kendele L. Works, Esq., and  
3 Keely A. Perdue, Esq., of the law firm Christiansen Law Offices, appeared on behalf of Miracle  
4 Flights.

5 Miracle Flights filed its Motion on July 27, 2021. Mrs. McGee filed "Plaintiff's Opposition  
6 to Miracle Flights' Motion for Reconsideration of Order Granting Plaintiff's Motion for Preliminary  
7 Injunction" ("Opposition") on August 10, 2021. The matter was originally scheduled for hearing  
8 on September 15, 2021, but by Stipulation and Order entered on September 9, 2021, the hearing  
9 was continued to October 7, 2021. Miracle Flights filed a Reply to Plaintiff's Opposition to  
10 Defendant/Counterclaimant Miracle Flights' Motion for Reconsideration of Order Granting  
11 Plaintiff's Motion for Preliminary Injunction ("Reply") on September 30, 2021. The Court heard  
12 arguments of counsel at the hearing held on October 7, 2021, and took the matter under advisement.  
13 On October 21, 2021, the Court issued a Minute Order setting forth its intended disposition of the  
14 Motion for Reconsideration.

15 Upon the Court's consideration of the pleadings and papers on file herein, the arguments  
16 and representations of counsel, and good cause appearing therefor, the Court hereby finds as  
17 follows:

18 1. Mrs. McGee filed her Motion for Preliminary Injunction (the "Injunction Motion")  
19 on October 31, 2019, and the matter was fully briefed prior to being heard on December 4, 2019.  
20 At Miracle Flights' request, the Court scheduled an evidentiary hearing on the Injunction Motion.

21 2. The evidentiary hearing began on January 13, 2020, and continued throughout 2020  
22 and 2021 due to issues involving the global COVID-19 pandemic, and scheduling issues of the  
23 parties, their counsel, and the Court.

24 3. After hearing eight days of testimony, the Court allowed the parties to file closing  
25 briefs. Miracle Flights filed its Closing Brief in Support of Opposition to Plaintiff's Motion for  
26 Preliminary Injunction ("Closing Brief") on February 26, 2021, and Mrs. McGee filed her  
27 Supplemental Brief in Support of Motion for Preliminary Injunction on the same date. The Court  
28 held closing arguments on March 17, 2021, and took the matter under advisement.

1           4.       On May 24, 2021, the Court issued a Minute Order granting Mrs. McGee's  
2 Injunction Motion and directing Mrs. McGee's counsel to prepare and submit a more detailed  
3 proposed order reflecting the Court's decision.

4           5.       On July 13, 2021, the Court issued its Order Granting Plaintiff's Motion for  
5 Preliminary Injunction ("Injunction Order").

6           6.       In its Motion for Reconsideration, Miracle Flights seeks reconsideration of the  
7 Injunction Order only as it pertains to the reinstatement of Mrs. McGee to the Board of Directors  
8 of Miracle Flights.

9           7.       A district court may reconsider a previously decided issue "if substantially different  
10 evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile*  
11 *Contractors Ass'n of S. Nevada v. Jolley, Urga, & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486,  
12 489 (1997); *see also Moore v. City of Las Vegas*, 92 Ne. 402, 405, 551 P.2d 244, 246 ("[o]nly in  
13 very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the  
14 ruling already reached should a motion for rehearing be granted").

15           8.       In its Motion for Reconsideration, Miracle Flights asserts no new evidence.<sup>1</sup>  
16 Additionally, Miracle Flights does not assert any change in controlling law.

17           9.       Instead, Miracle Flights offers four arguments for its assertion that the Court's  
18 Injunction Order is clearly erroneous.

19           10.      First, Miracle Flights asserts that the proposed Order submitted by Mrs. McGee to  
20 the Court consisted of "erroneous factual findings, which the Court never made." However, the  
21 Court has reviewed the record, and the Court's findings in the Injunction Order are adequately  
22 supported by the evidence in the record. To the extent that Miracle Flights asserts that the findings  
23 in the Injunction Order "would be tantamount to a grant of summary judgment", the Court rejects  
24 such assertion. The Injunction Order confirmed that Mrs. McGee established a "likelihood of  
25

---

26           <sup>1</sup> During the hearing on the Motion for Reconsideration, Mrs. McGee objected to the new  
27 declarations and documents attached to Miracle Flights' Reply. When deciding the Motion for  
28 Reconsideration, the Court did not consider the declarations and documents submitted with Miracle  
Flights' Reply. (See Order Regarding Hearing Held on October 7, 2021, entered on October 21,  
2021.)

1 succeeding on her claims." The Court's Injunction Order does not stand for the proposition that  
2 there has been a final adjudication of all issues. The Court's Injunction Order is limited in scope  
3 and is not a final adjudication of the facts and the law. The Court finds no basis to reconsider its  
4 Injunction Order on this ground.

5 11. Second, Miracle Flights asserts that the Court should reconsider its Injunction Order  
6 because Mrs. McGee made no showing of irreparable harm should she not be reinstated to the  
7 Board of Directors. However, Miracle Flights made this argument in its prior submissions to the  
8 Court, including its Opposition to Plaintiff's Motion for Preliminary Injunction filed on November  
9 19, 2019, and in Miracle Flights' Closing Brief. Miracle Flights does not cite to any new,  
10 controlling authority. The Court has previously found that "the balance of equities and potential  
11 irreparable harm favor the granting of Mrs. McGee's Injunction Motion." (*See* Injunction Order at  
12 10.) Moreover, Mrs. McGee established that every day she is prevented from exercising her duties  
13 as a Board member of Miracle Flights is a loss not compensable by monetary damages. *See Wisdom*  
14 *Imp. Sales co. v. Labatt Brewing Co.*, 339 F.3d 101, 114-115 (2d Cir. 2003) ("Conduct that  
15 unnecessarily frustrates efforts to obtain or preserve the right to participate in the management of a  
16 company may also constitute irreparable harm"); *Riverside Sch. Bd. v. Kobeski*, 146 Pa. Commw.  
17 106, 112, 604 A.2d 1173, 1176-77 (1992) (finding that school board member was entitled to a  
18 preliminary injunction reinstating him to the board after his removal for a misdemeanor conviction  
19 for assault because "the harm to [plaintiff's] interests would be greater than the injury to the Board's  
20 interest if the injunction were denied" and that "it is clear that failure to mandate [plaintiff's] return  
21 to the Board would result in irreparable harm.") The Court finds no basis to reconsider its  
22 Injunction Order on this ground.

23 12. Third, Miracle Flights asserts that the Court failed to consider that it will be harmed  
24 "because of the disruption that will be caused by reinstating Ms. McGee to the Board in contrast  
25 with the passage of time since her removal." However, Miracle Flights made this argument in its  
26 prior submissions to the Court, including its Opposition to Plaintiff's Motion for Preliminary  
27 Injunction filed on November 19, 2019, and in Miracle Flights' Closing Brief. Miracle Flights does  
28 not cite to any new, controlling authority. The Court has previously found that "the balance of

1 equities and potential irreparable harm favor the granting of Mrs. McGee's Injunction Motion."  
2 (*See* Injunction Order at 10.) Moreover, Miracle Flights' assertion that reinstatement will cause a  
3 "great detriment to the ability of the charity to function in a productive manner that serves its  
4 mission" is pure speculation and does not establish that Miracle Flights will suffer any harm. The  
5 Court finds no basis to reconsider its Injunction Order on this ground.

6 13. Fourth, Miracle Flights asserts that the Injunction Order violates public policy.  
7 However, Miracle Flights made this argument in Miracle Flights' Closing Brief. Miracle Flights  
8 does not cite to any new, controlling authority. The Court has previously found that "Mrs. McGee  
9 . . . established a likelihood of succeeding on her claim that the plain language of the Bylaws,  
10 Employment Agreement, as amended, and the Retirement and Consulting Agreement entitle Mrs.  
11 McGee to sit as a Board member until she no longer wishes to serve as a Board member or until  
12 the Court's final determination of this issue." *See Canfora v. Coast Hotels & Casinos, Inc.*, 121  
13 Nev. 771, 776, 121 P.3d 599, 603 (2005) ("Generally, when a contract is clear on its face, it 'will  
14 be construed from the written language and enforced as written.' The court has no authority to alter  
15 the terms of an unambiguous contract.") Miracle Flights cannot establish that honoring Mrs.  
16 McGee's bargained-for rights to a permanent or lifetime position on the Board for a company she  
17 founded and worked for the last thirty-four years violates public policy. The Court finds no basis  
18 to reconsider its Injunction Order on this ground.

19 Based on the foregoing, and good cause appearing, the Court orders as follows:

20 \\\

21 \\\

22 \\\

23 \\\

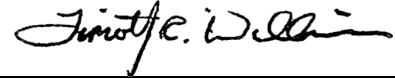
24 \\\

25 \\\

26 \\\

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that  
2 Defendant/Counterclaimant Miracle Flights' Motion for Reconsideration of Order Granting  
3 Plaintiff's Motion for Preliminary Injunction is DENIED.

4 Dated this 5th day of November, 2021

5 

6 629 FEA 5DD1 9564  
7 Timothy C. Williams  
8 District Court Judge

MH

8 Submitted by:

9 PETERSON BAKER, PLLC

CHRISTIENSEN TRIAL LAWYERS

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Las Vegas, NV 89101

*Attorneys for Miracle Flights*

# **EXHIBIT 1**

# **EXHIBIT 1**

## Erin Parcells

---

**From:** Kendelee Works <kworks@christiansenlaw.com>  
**Sent:** Friday, November 5, 2021 10:30 AM  
**To:** Tammy Peterson  
**Cc:** Keely Perdue; Peter S. Christiansen; Nikki Baker; Erin Parcells  
**Subject:** Re: McGee v. Miracle Flights - proposed order denying motion for reconsideration

Good Morning,

We have no issues with the proposed order. You may submit with my electronic signature.

Thank you,  
KLW

On Nov 5, 2021, at 8:33 AM, Tammy Peterson <[tpeterson@petersonbaker.com](mailto:tpeterson@petersonbaker.com)> wrote:

Good morning Kendelee

Following up on my email below. I'm attaching again for your reference the proposed Order, along with the Minute Order. Does the proposed Order meet with your approval? If so, please confirm we may affix your electronic signature.

Regards  
Tammy

**Tamara Beatty Peterson, Esq.**  
Peterson Baker, PLLC  
702.786.1001

---

**From:** Tammy Peterson  
**Sent:** Monday, November 1, 2021 2:07 PM  
**To:** Kendelee Works <[kworks@christiansenlaw.com](mailto:kworks@christiansenlaw.com)>; Keely Perdue <[keely@christiansenlaw.com](mailto:keely@christiansenlaw.com)>; Peter S. Christiansen <[pete@christiansenlaw.com](mailto:pete@christiansenlaw.com)>  
**Cc:** Nikki Baker (<[nbaker@petersonbaker.com](mailto:nbaker@petersonbaker.com)>) <[nbaker@petersonbaker.com](mailto:nbaker@petersonbaker.com)>; Erin L. Parcells (<[ERcells@petersonbaker.com](mailto:ERcells@petersonbaker.com)>) <[ERcells@petersonbaker.com](mailto:ERcells@petersonbaker.com)>  
**Subject:** McGee v. Miracle Flights - proposed order denying motion for reconsideration

Good afternoon Kendelee

Per the Court's Minute Order (a copy of which is attached), we drafted a proposed Order denying Miracle Flights' Motion for Reconsideration. See attached. Please let us know if you have any suggested changes or additions. And, in the event that the order meets with your approval, please let us know if you will consent to us using your electronic signature.

Thanks, we look forward to hearing from you.

Regards  
Tammy

**Tamara Beatty Peterson, Esq.**

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STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney-privileged and confidential, and intended only for the use of the individual or entity named above. If you have received this email in error, please notify us immediately by calling (702) 786-1001 and delete the message. Thank you.

<2021.10.21- Minute Order.pdf><Order Denying Motion for Reconsideration v4.docx>

1 **CSERV**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 Ann McGee, Plaintiff(s)

CASE NO: A-19-799634-B

7 vs.

DEPT. NO. Department 16

8 Miracle Flights, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/5/2021

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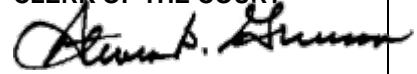
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Facsimile: 702.786.1002

*Attorneys for Ann and Bill McGee*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ANN MCGEE, a Nevada resident,  
  
Plaintiff,

v.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,  
  
Defendant.

MIRACLE FLIGHTS, a Nevada nonprofit  
corporation,

Counterclaimant,

v.

ANN MCGEE, an individual; WILLIAM  
MCGEE, an individual; DOES I through X,  
inclusive; and ROE BUSINESS  
ENTITIES, I through XX, inclusive,

Counterdefendants.

Case No.: A-19-799634-B  
Dept. No.: XVI

**NOTICE OF ENTRY OF ORDER DENYING  
DEFENDANT/COUNTERCLAIMANT  
MIRACLE FLIGHTS' MOTION FOR  
RECONSIDERATION OF ORDER  
GRANTING PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

1 PLEASE TAKE NOTICE that an ORDER DENYING  
2 DEFENDANT/COUNTERCLAIMANT MIRACLE FLIGHTS' MOTION FOR  
3 RECONSIDERATION OF ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY  
4 INJUNCTION ("Order") was entered on November 5, 2021. A copy of said Order is attached  
5 hereto.

6 Dated this 5<sup>th</sup> day of November, 2021.

7 PETERSON BAKER, PLLC

9 By: /s/ Tamara Beatty Peterson

10 TAMARA BEATTY PETERSON, ESQ., Bar No. 5218

11 tpeterson@petersonbaker.com

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18 *Attorneys for Ann and Bill McGee*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Peterson Baker, PLLC, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT/COUNTERCLAIMANT MIRACLE FLIGHTS' MOTION FOR RECONSIDERATION OF ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 5<sup>th</sup> day of November, 2021, to the following:

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pete@christiansenlaw.com  
KENDELEE L. WORKS, ESQ.  
kworks@christiansenlaw.com  
KEELY PERDUE, ESQ.  
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CHRISTIANSEN TRIAL LAWYERS  
710 S. 7th Street  
Las Vegas, Nevada 89101

*Attorneys for Defendant Miracle Flights*

/s/ Clarise Wilkins

An employee of Peterson Baker, PLLC

1 **ODM**

2 TAMARA BEATTY PETERSON, ESQ., Bar No. 5218

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5 nbaker@petersonbaker.com

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8 Las Vegas, NV 89101

9 Telephone: 702.786.1001

10 Facsimile: 702.786.1002

11 *Attorneys for Ann and Bill McGee*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 ANN MCGEE, a Nevada resident,

15 Plaintiff,

16 v.

17 MIRACLE FLIGHTS, a Nevada nonprofit  
18 corporation,

19 Defendant.

Case No.: A-19-799634-B

Dept. No.: XVI

**ORDER DENYING  
DEFENDANT/COUNTERCLAIMANT  
MIRACLE FLIGHTS' MOTION FOR  
RECONSIDERATION OF ORDER  
GRANTING PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION**

Hearing Date: October 7, 2021

Hearing Time: 9:00 a.m.

20 MIRACLE FLIGHTS, a Nevada nonprofit  
21 corporation,

22 Counterclaimant,

23 v.

24 ANN MCGEE, an individual; WILLIAM  
25 MCGEE, an individual; DOES I through X,  
26 inclusive; and ROE BUSINESS  
27 ENTITIES, I through XX, inclusive,

28 Counterdefendants.

Defendant/Counterclaimant Miracle Flights' Motion for Reconsideration of Order Granting Plaintiff's Motion for Preliminary Injunction filed on July 27, 2021 (the "Motion for Reconsideration") came before this Honorable Court for hearing on October 7, 2021. Tamara

1 Beatty Peterson, Esq., of the law firm of Peterson Baker, PLLC, appeared on behalf of  
2 Plaintiff/Counterdefendant Ann McGee. Peter S. Christiansen, Esq., Kendele L. Works, Esq., and  
3 Keely A. Perdue, Esq., of the law firm Christiansen Law Offices, appeared on behalf of Miracle  
4 Flights.

5 Miracle Flights filed its Motion on July 27, 2021. Mrs. McGee filed "Plaintiff's Opposition  
6 to Miracle Flights' Motion for Reconsideration of Order Granting Plaintiff's Motion for Preliminary  
7 Injunction" ("Opposition") on August 10, 2021. The matter was originally scheduled for hearing  
8 on September 15, 2021, but by Stipulation and Order entered on September 9, 2021, the hearing  
9 was continued to October 7, 2021. Miracle Flights filed a Reply to Plaintiff's Opposition to  
10 Defendant/Counterclaimant Miracle Flights' Motion for Reconsideration of Order Granting  
11 Plaintiff's Motion for Preliminary Injunction ("Reply") on September 30, 2021. The Court heard  
12 arguments of counsel at the hearing held on October 7, 2021, and took the matter under advisement.  
13 On October 21, 2021, the Court issued a Minute Order setting forth its intended disposition of the  
14 Motion for Reconsideration.

15 Upon the Court's consideration of the pleadings and papers on file herein, the arguments  
16 and representations of counsel, and good cause appearing therefor, the Court hereby finds as  
17 follows:

18 1. Mrs. McGee filed her Motion for Preliminary Injunction (the "Injunction Motion")  
19 on October 31, 2019, and the matter was fully briefed prior to being heard on December 4, 2019.  
20 At Miracle Flights' request, the Court scheduled an evidentiary hearing on the Injunction Motion.

21 2. The evidentiary hearing began on January 13, 2020, and continued throughout 2020  
22 and 2021 due to issues involving the global COVID-19 pandemic, and scheduling issues of the  
23 parties, their counsel, and the Court.

24 3. After hearing eight days of testimony, the Court allowed the parties to file closing  
25 briefs. Miracle Flights filed its Closing Brief in Support of Opposition to Plaintiff's Motion for  
26 Preliminary Injunction ("Closing Brief") on February 26, 2021, and Mrs. McGee filed her  
27 Supplemental Brief in Support of Motion for Preliminary Injunction on the same date. The Court  
28 held closing arguments on March 17, 2021, and took the matter under advisement.

1           4.       On May 24, 2021, the Court issued a Minute Order granting Mrs. McGee's  
2 Injunction Motion and directing Mrs. McGee's counsel to prepare and submit a more detailed  
3 proposed order reflecting the Court's decision.

4           5.       On July 13, 2021, the Court issued its Order Granting Plaintiff's Motion for  
5 Preliminary Injunction ("Injunction Order").

6           6.       In its Motion for Reconsideration, Miracle Flights seeks reconsideration of the  
7 Injunction Order only as it pertains to the reinstatement of Mrs. McGee to the Board of Directors  
8 of Miracle Flights.

9           7.       A district court may reconsider a previously decided issue "if substantially different  
10 evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile*  
11 *Contractors Ass'n of S. Nevada v. Jolley, Urga, & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486,  
12 489 (1997); *see also Moore v. City of Las Vegas*, 92 Ne. 402, 405, 551 P.2d 244, 246 ("[o]nly in  
13 very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the  
14 ruling already reached should a motion for rehearing be granted").

15           8.       In its Motion for Reconsideration, Miracle Flights asserts no new evidence.<sup>1</sup>  
16 Additionally, Miracle Flights does not assert any change in controlling law.

17           9.       Instead, Miracle Flights offers four arguments for its assertion that the Court's  
18 Injunction Order is clearly erroneous.

19           10.      First, Miracle Flights asserts that the proposed Order submitted by Mrs. McGee to  
20 the Court consisted of "erroneous factual findings, which the Court never made." However, the  
21 Court has reviewed the record, and the Court's findings in the Injunction Order are adequately  
22 supported by the evidence in the record. To the extent that Miracle Flights asserts that the findings  
23 in the Injunction Order "would be tantamount to a grant of summary judgment", the Court rejects  
24 such assertion. The Injunction Order confirmed that Mrs. McGee established a "likelihood of  
25

---

26           <sup>1</sup> During the hearing on the Motion for Reconsideration, Mrs. McGee objected to the new  
27 declarations and documents attached to Miracle Flights' Reply. When deciding the Motion for  
28 Reconsideration, the Court did not consider the declarations and documents submitted with Miracle  
Flights' Reply. (See Order Regarding Hearing Held on October 7, 2021, entered on October 21,  
2021.)

1 succeeding on her claims." The Court's Injunction Order does not stand for the proposition that  
2 there has been a final adjudication of all issues. The Court's Injunction Order is limited in scope  
3 and is not a final adjudication of the facts and the law. The Court finds no basis to reconsider its  
4 Injunction Order on this ground.

5 11. Second, Miracle Flights asserts that the Court should reconsider its Injunction Order  
6 because Mrs. McGee made no showing of irreparable harm should she not be reinstated to the  
7 Board of Directors. However, Miracle Flights made this argument in its prior submissions to the  
8 Court, including its Opposition to Plaintiff's Motion for Preliminary Injunction filed on November  
9 19, 2019, and in Miracle Flights' Closing Brief. Miracle Flights does not cite to any new,  
10 controlling authority. The Court has previously found that "the balance of equities and potential  
11 irreparable harm favor the granting of Mrs. McGee's Injunction Motion." (*See* Injunction Order at  
12 10.) Moreover, Mrs. McGee established that every day she is prevented from exercising her duties  
13 as a Board member of Miracle Flights is a loss not compensable by monetary damages. *See Wisdom*  
14 *Imp. Sales co. v. Labatt Brewing Co.*, 339 F.3d 101, 114-115 (2d Cir. 2003) ("Conduct that  
15 unnecessarily frustrates efforts to obtain or preserve the right to participate in the management of a  
16 company may also constitute irreparable harm"); *Riverside Sch. Bd. v. Kobeski*, 146 Pa. Commw.  
17 106, 112, 604 A.2d 1173, 1176-77 (1992) (finding that school board member was entitled to a  
18 preliminary injunction reinstating him to the board after his removal for a misdemeanor conviction  
19 for assault because "the harm to [plaintiff's] interests would be greater than the injury to the Board's  
20 interest if the injunction were denied" and that "it is clear that failure to mandate [plaintiff's] return  
21 to the Board would result in irreparable harm.") The Court finds no basis to reconsider its  
22 Injunction Order on this ground.

23 12. Third, Miracle Flights asserts that the Court failed to consider that it will be harmed  
24 "because of the disruption that will be caused by reinstating Ms. McGee to the Board in contrast  
25 with the passage of time since her removal." However, Miracle Flights made this argument in its  
26 prior submissions to the Court, including its Opposition to Plaintiff's Motion for Preliminary  
27 Injunction filed on November 19, 2019, and in Miracle Flights' Closing Brief. Miracle Flights does  
28 not cite to any new, controlling authority. The Court has previously found that "the balance of

1 equities and potential irreparable harm favor the granting of Mrs. McGee's Injunction Motion."  
2 (*See* Injunction Order at 10.) Moreover, Miracle Flights' assertion that reinstatement will cause a  
3 "great detriment to the ability of the charity to function in a productive manner that serves its  
4 mission" is pure speculation and does not establish that Miracle Flights will suffer any harm. The  
5 Court finds no basis to reconsider its Injunction Order on this ground.

6 13. Fourth, Miracle Flights asserts that the Injunction Order violates public policy.  
7 However, Miracle Flights made this argument in Miracle Flights' Closing Brief. Miracle Flights  
8 does not cite to any new, controlling authority. The Court has previously found that "Mrs. McGee  
9 . . . established a likelihood of succeeding on her claim that the plain language of the Bylaws,  
10 Employment Agreement, as amended, and the Retirement and Consulting Agreement entitle Mrs.  
11 McGee to sit as a Board member until she no longer wishes to serve as a Board member or until  
12 the Court's final determination of this issue." *See Canfora v. Coast Hotels & Casinos, Inc.*, 121  
13 Nev. 771, 776, 121 P.3d 599, 603 (2005) ("Generally, when a contract is clear on its face, it 'will  
14 be construed from the written language and enforced as written.' The court has no authority to alter  
15 the terms of an unambiguous contract.") Miracle Flights cannot establish that honoring Mrs.  
16 McGee's bargained-for rights to a permanent or lifetime position on the Board for a company she  
17 founded and worked for the last thirty-four years violates public policy. The Court finds no basis  
18 to reconsider its Injunction Order on this ground.

19 Based on the foregoing, and good cause appearing, the Court orders as follows:

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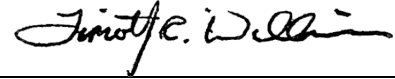
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1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that  
2 Defendant/Counterclaimant Miracle Flights' Motion for Reconsideration of Order Granting  
3 Plaintiff's Motion for Preliminary Injunction is DENIED.

4 Dated this 5th day of November, 2021

5 

6 629 FEA 5DD1 9564  
7 Timothy C. Williams  
8 District Court Judge

MH

8 Submitted by:

9 PETERSON BAKER, PLLC

CHRISTIENSEN TRIAL LAWYERS

10 By: /s/ Tamara Beatty Peterson  
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14 NIKKI L. BAKER, ESQ.  
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21 *Attorneys for Ann and Bill McGee*

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*Attorneys for Miracle Flights*

# **EXHIBIT 1**

# **EXHIBIT 1**

## Erin Parcells

---

**From:** Kendelee Works <kworks@christiansenlaw.com>  
**Sent:** Friday, November 5, 2021 10:30 AM  
**To:** Tammy Peterson  
**Cc:** Keely Perdue; Peter S. Christiansen; Nikki Baker; Erin Parcells  
**Subject:** Re: McGee v. Miracle Flights - proposed order denying motion for reconsideration

Good Morning,

We have no issues with the proposed order. You may submit with my electronic signature.

Thank you,  
KLW

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Tammy

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