

IN THE IOWA DISTRICT COURT
FOR CLAYTON COUNTY

LORI POPE,)	
Plaintiff,)	CASE NO. CVCV011037
)	
vs.)	
)	
KATHRYN A KESSLER,)	JURY INSTRUCTIONS
INDIVIDUALLY AND AS EXECUTOR)	
OF THE ESTATE OF GERALD)	
EUGENE KESSLER, and JEROD)	
KESSLER,)	
Defendant.)	

Members of the Jury:

Plaintiff Lori Pope brought this case to establish that she and Gerald "Jerry" Kessler formed a common law marriage in Iowa. She brought this action against Jerry's son, Jerod Kessler, and Jerry's daughter, Kathryn Kessler, individually and as the executor of Jerry's estate, contending the Defendants were unjustly enriched from their receipt of property that she and Jerry jointly owned and improved.

The Defendants dispute that the Jerry and the Plaintiff formed a common law marriage. They further dispute that they are liable for unjust enrichment.

Do not consider this summary as proof of any claim or defense. Decide the facts from all the evidence and apply the law which I will now give you.

Instruction No. 1

100.2

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

Instruction No. 2

100.3 modified.

For the claim of common law marriage in Instruction No. 8, the burden of proof is on the Plaintiff to establish by the preponderance of the evidence that is clear, consistent, and convincing. "Clear, consistent, and convincing evidence" refers to the character or nature of the evidence, whereas "preponderance of evidence" refers to whether the evidence is more convincing than opposing evidence. Evidence is clear, consistent, and convincing if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

For the claim of unjust enrichment in Instruction No. 13, the burden of proof is on the Plaintiff to establish by a preponderance of the evidence. A preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Instruction No. 3

100.4

You must base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the Court. You may examine the exhibits closely, but be careful not to alter or destroy them.
3. Stipulations, which are agreements between the attorneys.
4. Any other matter admitted (e.g.: answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial, or a combination of both. Circumstantial evidence is evidence which does not directly prove the existence of a fact but merely gives rise to a logical inference that it exists. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pretrial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to, which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Instruction No. 4

100.6

During this trial, you have heard the word 'interrogatory'. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing.

Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

Instruction No. 5

100.9

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

Instruction No. 6

You must consider all the instructions together. No one instruction includes all of the applicable law.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth.

Instruction No. 7

100.9

Nothing I have said or done during the trial was intended to give any opinion as to the facts, proof, or what your verdict should be.

The Court has not by its instructions, or by any ruling made, by any act done, by anything said during the trial, or by any facial expression, gesture, or tone of voice intended or attempted to give any intimation or opinion as to what the facts are or what are not the facts, what the proof is or what it is not, or what your verdict should be. During the trial, the Court has ruled upon objections to evidence which have been made by counsel. Such rulings are the sole responsibility of the Court. In your consideration of the case, you will give no significance or weight whatsoever to such rulings. You will consider only the evidence which has been received before you as part of the record in this case.

Instruction No. 8

To establish a common law marriage, the Plaintiff must establish all of the following:

1. That Plaintiff and Jerry had a present intent and agreement to be married;
2. Continuous cohabitation; and
3. That Plaintiff and Jerry made public declarations or held themselves out as being married.

If Plaintiff does not prove each of these three elements, then you must find in favor of Defendants on Plaintiff's common law marriage claim. On the other hand, if Plaintiff proves each of these three elements, then you must find in favor of Plaintiff on claim of common law marriage.

Instruction No. 9

Concerning element 1 in Instruction No. 8, present intent and agreement to be married exists if the Plaintiff and Jerry expressly agreed to be married, or if an implied agreement existed. An implied agreement exists where one party intends marriage, and the conduct of the other party reflects the same intent, even if the other party's intent is not to be married. Proof of cohabitation, as well as evidence of conduct and general repute in the community where the parties reside, is evidence that can be used to support a present intent and agreement to be married. This includes the two individuals' conduct and their general reputation in the community that is consistent with those who intend and have agreed to be married.

Instruction No. 10

Concerning element 2 in Instruction No. 8, there is no particular length of time that cohabitation must exist to establish a common law marriage. It is important for the cohabitation to be tied to and occur during times after the present intent and agreement to be married. Once a common law marriage is established, spouses remain married even if they stop cohabitating.

Instruction No. 11

Concerning element 3 in Instruction No. 8, public declarations or holding out to the public means to hold themselves out to the public as married; there can be no secret common law marriage . You may consider how the parties were viewed by friends, family, and the broader community; how others addressed them; and any representations the parties made about their relationship. It does not mean that all declarations or statements must be entirely consistent with marriage, a substantial holding out to the public is sufficient. Occasional or inconsistent references are not enough if they appear to have been made for convenience or financial benefit, rather than as part of a consistent public representation of being married. Once a common law marriage is established, a person's later inconsistent assertions do not defeat that common law marriage. There is no such thing as a common law divorce.

Instruction No. 12

With respect to marriage you may have heard the phrase "till death do us part." Put this phrase out of your mind during deliberations. You must decide whether Gerald "Jerry" Kessler entered into a common law marriage with Lori Pope during his lifetime under Instruction No. 8.

Instruction No. 13

To prevail on the claim of unjust enrichment, Plaintiff must prove the following elements by a preponderance of the evidence:

1. Defendants were enriched by the receipt of a benefit.
2. Defendants' enrichment was at Plaintiff's expense, harm, or disadvantage.
3. It is unjust to allow Defendants to retain the benefit under the circumstances.

If Plaintiff does not prove each of these three elements, then you must find in favor of Defendants on Plaintiff's unjust enrichment claim. On the other hand, if Plaintiff proves each of these three elements, then Plaintiff is entitled to damages in some amount as set out in Instruction No. 16.

Instruction No. 14

Concerning element 1 of Instruction No. 13, the word "benefit" means any form of advantage. Benefits can be direct or indirect, and can involve benefits conferred by third parties.

Instruction No. 15

Concerning element 3 of Instruction No. 13, the word "unjust" means contrary to justice, or not fair or reasonable. You must decide, from your consideration of all of the circumstances, whether allowing Defendants to retain a benefit at Plaintiff's expense, harm, or disadvantage would be unjust.

Instruction No. 16

It is my duty to instruct you about compensatory damages. By instructing you on damages, I do not mean to suggest what your verdict should be on any claim. If you find in favor of Plaintiff on her unjust enrichment claim, then you must determine what amount of damages to award. "Damages" are the amount of money that will fairly and adequately compensate Plaintiff under her unjust enrichment claim. The purpose of awarding damages is restore Plaintiff to the position she would have been in had it not been for the unjust enrichment of Defendants. It is for you to determine what damages Plaintiff has proven by a preponderance of the evidence.

Any damages award must be based upon evidence and not upon speculation, guesswork, conjecture, or sympathy. Compensatory damages must not be based upon a desire to punish or penalize Defendants, or anyone else. You cannot determine the amount for a particular item of damages by taking down each juror's estimate and agreeing in advance that the average of those estimates will be your award for that item of damages.

The specific measure of damages for Plaintiff's unjust enrichment claim is the value of the benefits that Defendants received.

Instruction No. 17

100.23-modified

During deliberations, you are prohibited from doing any research or conducting an investigation about this case on your own before reaching your verdict. This includes use cell phones, and electronic media such as text messages, Facebook, X, LinkedIn, YouTube, Twitter, email, etc. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case has been tried on evidence presented in the courtroom. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. Failure to follow this instruction may result in the case having to be retried and could potentially result in you being held in contempt and punished.

Instruction No. 18

Occasionally, jurors want to ask a question after they begin deliberating. I have prepared the instructions after carefully considering the case with the attorneys. I have tried to use language which is generally understandable. Usually, questions about instructions can be answered by re-reading them. If a question should occur, please consider the following:

- A. Words not defined in these instructions should be given their ordinary meaning.
- B. There will be no additional evidence and no additional instructions of law. These instructions contain all the law you need to decide this case.
- C. I will meet with you after you reach a verdict, if I can. At that time, I will be happy to answer your questions about the trial process.
- D. If you ask me a question during your deliberations, your presiding officer must reduce the question to writing and give it to the court attendant, who will deliver it to me. I must then contact the lawyers and conduct a hearing with them but not in your presence. This naturally takes time and deliberation before I can reply. After that, I will send you a written answer consistent with subparagraphs A. and B. above.

If, after considering these matters, you still wish to ask me a question, follow the procedure outlined here, then save your written question and the written answer I send you and return them with your verdict form when you have completed your deliberations and returned a verdict.

Instruction No. 19

100.21

During the trial you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

Instruction No. 20

100.18

When you begin your deliberations, you should select a presiding juror. He or she shall see that your deliberations are carried on in an orderly manner, that the issues are fully and freely discussed, and that every juror is given an opportunity to express their views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved, and you may later hesitate to change an announced position even if shown it may be incorrect.

It is your duty as jurors to consult with one another and reach an agreement, if you can do so without compromising your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors.

During the deliberations, do not hesitate to re-examine your view and change your opinion if convinced it is wrong. But do not change your opinion as to the weight or effect of the evidence just because it is the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember you are not partisans or advocates but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

Instruction No. 21

300.1

I am giving you two verdict forms, one for the claim of common law marriage and one for the claim of unjust enrichment. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and interrogatories must be signed by your foreperson.

After deliberating for six hours from 11:57 o'clock A.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict and interrogatories must be signed by all seven jurors who agree.

When you have agreed upon the verdict and interrogatories and appropriately signed it, please notify the court attendant.

Dated: June 9, 2025.



Melissa Anderson-Seeber
Melissa Anderson-Seeber,
Judge of the Iowa District Court

IN THE IOWA DISTRICT COURT
FOR CLAYTON COUNTY

LORI POPE,)
Plaintiff,) CASE NO. CVCV011037
vs.)
KATHRYN A KESSLER,)
INDIVIDUALLY AND AS EXECUTOR) JURY INSTRUCTIONS
OF THE ESTATE OF GERALD)
EUGENE KESSLER, and JEROD) VERDICT FORM 1
KESSLER,)
Defendant.)

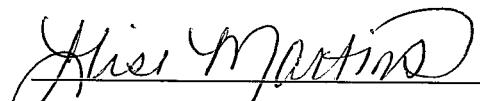
COMMON LAW MARRIAGE CLAIM

Question No. 1: Do you find that Plaintiff Lori Pope has proven her common law marriage claim against Defendants Kathryn Kessler and Jerod Kessler?

Answer: No

(Write in your answer "yes" or "no" in the above blank space)

Note: If you answered "yes" or "no" to Question No. 1, then sign and date this Verdict Form, and go on to answer Verdict Form 2.



PRESIDING JUROR*

*To be signed only if verdict is unanimous.

Juror**

**To be signed by the jurors agreeing thereto after six hours or more of deliberations.

IN THE IOWA DISTRICT COURT
FOR CLAYTON COUNTY

LORI POPE,)	
Plaintiff,)	CASE NO. CVCV011037
)	
vs.)	
)	
KATHRYN A KESSLER,)	JURY INSTRUCTIONS
INDIVIDUALLY AND AS EXECUTOR)	
OF THE ESTATE OF GERALD)	VERDICT FORM 2
EUGENE KESSLER, and JEROD)	
KESSLER,)	
Defendant.)	

UNJUST ENRICHMENT CLAIM

Question No. 1: Do you find that Plaintiff Lori Pope has proven the claim of unjust enrichment claim against Defendants Kathryn Kessler and Jerod Kessler?

Answer: YES

(Write in your answer "yes" or "no" in the above blank space)

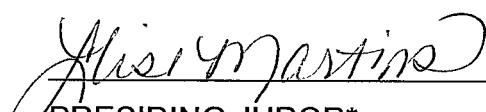
Note: If you answered "yes" to Question No. 1, then go on to answer Question No. 2. If you answered "no" to Question No. 1, then do not answer Question No. 2, and sign and date this Verdict Form.

Question No. 2: What amount of damages should Plaintiff be awarded on her unjust enrichment claim against Defendants?

Answer: \$85,000

(Write in a dollar figure in the above blank space)

Note: If you answered "yes" to Question No. 1 and filled in a dollar figure in response to Question No. 2, then sign and date this Verdict Form.



PRESIDING JUROR*

*To be signed only if verdict is unanimous.

Juror**

**To be signed by the jurors agreeing thereto after six hours or more of deliberations.

IN THE IOWA DISTRICT COURT
FOR CLAYTON COUNTY

LORI POPE,)	CASE NO. CVCV011037
Plaintiff,)	
vs.)	
KATHRYN A KESSLER,)	ORDER ON VERDICT
INDIVIDUALLY AND AS EXECUTOR)	
OF THE ESTATE OF GERALD)	
EUGENE KESSLER, and JEROD)	
KESSLER,)	
Defendant.)	

Jury trial began in the above matter on June 4, 2025. Following closing arguments the parties agreed to waive their presence and counsels' presence for the return of the verdict. The parties and counsel agreed to a phone conference at the time of the verdict to review the verdict with the Court. The jury began its deliberations on June 9, 2025 at approximately 11:57 a.m. until approximately 10:17 a.m. on June 10, 2025, when it informed the court attendants it had reached a verdict.

The Court conducted a telephone conference with the parties' counsel and reviewed the verdict form. The jury's verdict was unanimous and signed by the presiding juror. On the claim of common law marriage (Verdict Form 1), the jury returned a verdict in favor of the Defendants. On the claim of unjust enrichment (Verdict Form 2), the jury returned a verdict in favor of the Plaintiff and against the Defendant in the total amount of \$85,000.00. Following review of the verdict with counsel and with their consent, the jury was discharged and the verdict filed with the clerk of court.

IT IS THE ORDER OF THE COURT that:

1. Written certification of all allowable expenses shall be filed on or before June 27, 2025, unless additional time is requested. Any objections to such expenses shall be filed within 10 days after the written certification is filed with the clerk.
2. Any claim by counsel for attorney fees shall be submitted with an itemized statement of attorney fees.
3. Motions under Iowa R. Civ. P. 1.1003 and 1.1004 and bills of exception under Iowa R. Civ. P. 1.1001 must be filed within fifteen days after filing of the verdict with the clerk.
4. The Court reserves entering judgment on the verdict to allow the certification of remaining expenses/costs and post-trial motions as set forth above. If no objections or post-trial motions are filed as set forth above, the Court will enter judgment without further hearing.



State of Iowa Courts

Case Number

CVCV011037

Type:**Case Title**LORI POPE VS KATHRYN KESSLER ET AL
OTHER ORDER

So Ordered

Melissa Anderson-Seeber, District Court Judge
First Judicial District of Iowa

Electronically signed on 2025-06-10 20:15:36

IN THE IOWA DISTRICT COURT FOR CLAYTON COUNTY

<p>LORI POPE, Plaintiff, v. KATHRYN A KESSLER, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF GERALD EUGENE KESSLER, and JEROD KESSLER, Defendants.</p>	<p>Case No. CVCV011037</p> <p>PLAINTIFF'S MOTION TO AMEND JUDGMENT</p>
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Plaintiff Lori Pope (“Plaintiff”) respectfully asks the Court to amend the judgment entered in this case to include interest and costs, and states:

1. Prejudgment interest.

Plaintiff is entitled to “prefiling” interest because her damages were “complete at a particular time” prior to commencing this action. *Gosch v. Juelfs*, 701 N.W.2d 90, 92 (Iowa 2005). Prefiling prejudgment interest runs from the date the damage is complete, *Schimmelpennig v. Eagle Nat. Assur. Corp.*, 641 N.W.2d 814, 816, at a rate of 5%, as set by Iowa Code section 535.2(1)(b). *Gosch*, 701 N.W.2d at 92; Iowa Code § 535.2(1)(b). Because this is not a comparative fault case, the issue of prejudgment interest is *not* governed by Iowa Code sections 535.3 and 668.13. *Id.* (holding section 535.3 incorporated only rate, and not “commencement of the action” language of section 668.13); *Old Maint. Enterprises, LLC v. Orascom E&C USA, Inc.*, No. 316CV00014SMRCFB, 2019 WL 13169891, at *2 (S.D. Iowa Mar. 1, 2019) (explaining issue).

Here, Plaintiff’s property deprivation occurred in June 2021, when that which was hers was not provided to her when she moved out of Jerry’s house. The estate succeeded to this liability following Jerry’s passing in spring 2022, and rightfully owes Plaintiff prefiled

prejudgment interest. For computation purposes, Plaintiff asks the Court to begin the interest award July 1, 2021. Running through the date of filing, August 10, 2022, yields prefilng prejudgment interest of \$4,715.75 (405 days at \$11.6438 per diem, which is the daily interest accrual of \$85,000 at 5% as set by Iowa Code section 535.2(1)(b)). Plaintiff asks the Court to amend the judgment accordingly.

2. Post-judgment interest.

Post-judgment interest starts on the “date of the filing of the petition” and is allowed at the rate set by section 535.3(1)(a). *Fed. Land Bank of Omaha v. Woods*, 520 N.W.2d 305, 308 (Iowa 1994); Iowa Code § 535.3(1)(a). Incorporating section 668.13, section 535.3(1)(a) equates the rate of interest to “the one-year treasury constant maturity published by the federal reserve in the H15 report settled immediately prior to the date of the judgment plus two percent.” Iowa Code § 668.13(3). As of June 9, 2025, that rate is 6.13% (4.13% + 2%). *See* Exhibit 1 at 1. This rate applies to the “sum” of the judgment and the prejudgment interest. *Matter of Mt. Pleasant Bank & Tr. Co.*, 455 N.W.2d 680, 686 (Iowa 1990); *see Hart v. Cusick*, 820 N.W.2d 159 (Table), 2012 WL 2122629, at *4 n.4 (Iowa Ct. App. June 13, 2012) (explaining mechanics of “aggregat[ing] the principal and prejudgment interest”).

Applying these authorities here results in post-judgment interest of \$15,594.69 as of June 10, 2025, with \$15.07 per diem thereafter. Showing the work follows: 1,035 days between August 10, 2022 (the petition filing date) and June 10, 2025 (the verdict/judgment date) times \$15.07 interest per diem, calculated at the 6.13% post-judgment interest rate times the aggregate of the principal and prejudgment interest amounts, \$89,715.75. Plaintiff asks the Court to amend the judgment accordingly.

3. Costs.

The June 10, 2025 order did not award expenses or assess the costs of this action against the defendants, but directed the parties to submit related certifications to support that award. “Costs” “has a well-defined legal meaning and includes the sums ordinarily taxable for expense incurred in an action as provided by statute.” *Iowa Dep’t of Transp. v. Soward*, 650 N.W.2d 569, 572 (Iowa 2002) (cleaned up). Itemized in the attached expense detail and related certification, Plaintiff’s taxable costs of this action amount to \$436.90. Exhibit 2. These include the petition-filing fee and costs of procuring copies of records as part of testimony at trial. *CSS2 Enter., Inc. v. Farmers Co-op. Co.*, 871 N.W.2d 521 (Table), 2015 WL 4935834, at *3 (Iowa Ct. App. Aug. 19, 2015) (costs include filing fees and service fees); Iowa Code § 625.6.

Further, it is the undersigned’s understanding that the Court file records \$80.00 of unassessed costs. Plaintiff ask the Court to tax these costs and any remaining unassessed costs against the Defendants.

4. Total Amended Judgment Request

The total judgment amount and amendment that Plaintiff requests therefore totals \$105,747.34 with \$15.07 per diem after June 10, 2025, plus any unassessed court costs that may exist assessed to Defendants.

WHEREFORE, Plaintiff respectfully requests that the Court grant this Motion, amend the judgment as requested herein, and enter such further relief in Plaintiff’s favor as the Court deems just and proper.

Dated: June 25, 2025

SIMMONS PERRINE MOYER BERGMAN

/s/Abram V. Carls

Abram V. Carls, AT0011818

115 Third Street SE, Suite 1200
Cedar Rapids, IA 52401-1266
Telephone: (319) 366-7641
Facsimile: (319) 366-1917
E-mail: acarls@spmblaw.com
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2025, I electronically filed the foregoing with the Clerk of the Court by using the Iowa Electronic Document Management System which will send a notice of electronic filing to the following. Per rule 16.315(1), this constitutes service of the document(s) for purposes of the Iowa Court Rules.

/s/ Abram V. Carls

Series Description Market yield on U.S. Treasury securities at 1-year constant maturity, quoted on investment basis
Unit: Percent:_Per_Year
Multiplier: 1
Currency: NA
Unique Identifier: H15/H15/RIFLGFCY01_N.B
Time Period RIFLGFCY01_N.B

6/2/2025	4.12
6/3/2025	4.12
6/4/2025	4.06
6/5/2025	4.08
6/6/2025	4.14
6/9/2025	4.13
6/10/2025	4.12
6/11/2025	4.08
6/12/2025	4.06
6/13/2025	4.09
6/16/2025	4.1
6/17/2025	4.1
6/18/2025	4.1
6/19/2025	ND
6/20/2025	4.07
6/23/2025	4

IN THE IOWA DISTRICT COURT FOR CLAYTON COUNTY

<p>LORI POPE, Plaintiff, v. KATHRYN A KESSLER, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF GERALD EUGENE KESSLER, and JEROD KESSLER, Defendants.</p>	<p>Case No. CVCV011037</p> <p>CERTIFICATION OF PLAINTIFF'S COSTS</p>
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I, Abram V. Carls, state as follows:

1. I am counsel for Plaintiff Lori Pope and in that role obtained knowledge of certain costs and expenses incurred in relation to the above-captioned matter.
2. Attached to this certification is an expense entry detail kept by my firm in the ordinary course of business. As detailed therein, Ms. Pope actually incurred \$436.90 of costs and expenses, which total does not include attorney travel costs.

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

Dated: June 25, 2025

Signed: /s/ Abram V. Carls

Expense Entry Detail by Client

1/1/1900 - 6/30/2025

Client
Matter

322291C POPE, LORI

Billed Expenses

Date	Client	Matter	Expense Code	Narrative	Amount
08/12/2022	322291C POPE, LORI	222543 KESSLER PROBATE	E112	IOWA JUDICIAL BRANCH RE NEW CASE FILING FEE	195.00
04/21/2023	322291C POPE, LORI	222543 KESSLER PROBATE	E102	MEDICAL RECORD RETRIEVAL FEE FROM FINLEY HOSPITAL FOR JERRY KESSLER'S RECORDS.	85.00
08/21/2023	322291C POPE, LORI	222543 KESSLER PROBATE	E102	CIOX HEALTH RE: FEES FOR MEDICAL RECORDS FROM MED ASSOCIATES CLINIC FOR GERALD KESSLER	156.90
Total Billed Expenses					436.90

Unbilled Expenses

Date	Client	Matter	Expense Code	Narrative	Amount
06/19/2025	322291C POPE, LORI	222543 KESSLER PROBATE	E110	PAYMENT FOR MILEAGE FOR TRIAL IN CLAYTON COUNTY ON 6/4, 6/5, 6/6 & 6/9/25	420.00

Total Unbilled Expenses

222543 KESSLER PROBATE	856.90
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322291C POPE, LORI

856.90

IN THE IOWA DISTRICT COURT FOR CLAYTON COUNTY

LORI POPE

Plaintiff,

vs.

KATHRYN A. KESSLER,
INDIVIDUALLY AND AS EXECUTOR OF THE
ESTATE OF GERALD EUGENE KESSLER
AND JEROD KESSLER,

Defendants.

Case No. CVCV011037

**DEFENDANT'S RESISTANCE TO
PLAINTIFF'S MOTION TO AMEND
JUDGMENT**

COME NOW Defendants, by and through their undersigned counsel, and for their resistance to the Plaintiff's Motion to Amend Judgment, hereby state the following:

1. Prejudgment Interest

The Plaintiff is not entitled to "prefiling interest" because there is no explicit date set forth either to the jury or in the record of when Plaintiff's damages were "complete", as required in Gosch which the Plaintiff cites. Gosch v. Juelfs, 701 N.W.2d 90, 92 (Iowa 2005). The issue in Gosch was the date to accrue prejudgment interest on property damage to a vehicle destroyed in a collision, which was the date of the accident which totaled the vehicle. 701 N.W.2d at 90-91. The central exception in granting pre-judgment interest revolves around this "completed damages" rule. Hook v. Trevino, 839 N.W.2d 434, 451 (Iowa 2013). In such a case as Gosch, the date of the collision where the vehicle was destroyed was the date of "completed damage", and easily calculable as no further damages could be incurred. Gosch, 701 N.W.2d 92. Here, the date of "completed damages" was not explicitly proven in the record, and further was not a question presented to the jury. Plaintiff requests

that the Court now determine that July 1, 2021 is the date of “completed damage” without offering any evidence to determine that fact besides Ms. Pope moving out in June 2021. The “completed damages” date, when not provided to a jury, must be explicitly clear and stated throughout the record. See Hook, 839 N.W.2d at 452-53. Here, the jury verdict awarding unjust enrichment damages to Plaintiff did not appear to be tied to any particular expense or time, certainly not anything particular in the record, and therefore a date cannot now be concocted by Plaintiff just to attempt to collect pre-filing and pre-judgment interest at this juncture.

Additionally, there is a crucial distinction between unliquidated claims and liquidated claims which should prevent pre-judgment interest in this matter. “Interest runs from the time money becomes due and payable, and in the case of unliquidated claims this is the date they become liquidated, ordinarily the date of judgment...” Schimmelpfennig v. Eagle Nat. Assur. Corp., 641 N.W.2d 814, 816 (Iowa 2002). A claim is deemed liquidated when the precise amount is fixed or agreed upon, or can be “determined by the rules of arithmetic or law.” Olson v. Wilson & Co., 244 Iowa 895 (1953). In unliquidated claims, the interest begins to accrue when the amount becomes liquidated, which is the judgment date. Schimmelpfennig, 641 N.W.2d at 816.

The Plaintiff relies on Old Maintenance Enterprises, LLC v. Orascom E&C USA, Inc., a conversion case where Iowa has the general rule where “interest is usually allowed from the date of conversion.” 2019 WL 13169891 at 3 (quoting Brenton Nat'l Bank of Des Moines v. Ross, 492 N.W.2d 441, 443 (Iowa Ct. App. 1992)). In unjust enrichment claims such as the present case, the value of the enrichment does not become realized until the judgment, and

thus only post-judgment interest is allowed. Schimmelpfennig, 641 N.W.2d at 816. The exception provided in Gosch v. Juelfs is for unliquidated claims that have a definite date where the damages are “complete”, and no further damages are incurred. 701 N.W.2d 90, 92 (Iowa 2005). The very nature of unjust enrichment claims is circumstance-determinative, as to the value of enrichment unjustly obtained, the length of time enriched, and the surrounding facts for continuous enrichment. Iowa Waste Systems, Inc. v. Buchanan County, 617 N.W.2d 23, 30-31 (2000). When there is no fixed date as to when the unjust enrichment was “complete”, the exception provided by Gosch does not apply and therefore no pre-judgment interest can be awarded. See generally Gosch, 701 N.W.2d at 92.

2. Post-Judgment Interest

The Plaintiff is not entitled to the post-judgment interest it seeks. The Plaintiff uses the case Fed. Land Bank of Omaha v. Woods to establish that post-judgment interest starts on the “date of the filing of the petition” at interest rates allowed by §535.3(1)(a). 520 N.W.2d 305, 308 (Iowa 1994). The citation made by the Plaintiff attempts to bootstrap an additional provision for interest to begin at the date of filing the petition. In 1997, the legislature amended section 535.3 to eliminate the requirement where judgment interest accrued from the commencement of the action. Frontier Leasing Corp. v. Acevedo Grocery, Inc., 2006 WL 229501 at 3 (Iowa Ct. App. 2006). This statute supersedes previous versions that allowed interest to accrue from the date of commencement of the action. Id. The current version of the statute reads:

I.C.A. §535.3(1) a. Interest shall be allowed on all money due on judgments and decrees of courts at a rate calculated according to section 668.13. (Emphasis added).

The plaintiff contended in Frontier just as the Plaintiff contends today, that interest should accrue from the date of commencement, as the provision in §668.13(1) reads that “interest, except interest awarded for future damages, shall accrue from the date of the commencement of the action.” However, as the Iowa Supreme Court noted, §535.3’s reference to §668.13 “relates only to the rate of interest, and does not incorporate §668.13(1)’s provision regarding the time for interest accrual.” Frontier, 2006 WL 229501 at 3 (referencing Schimmelpfennig v. Eagle Nat. Assur. Corp., 641 N.W.2d 814, 815 (Iowa 2002)). To interpret that interest on a judgment accrues from the date of filing the action “would not only run contrary to the plain meaning of the words used in the statute, but also the legislature’s decision to remove such provision from §535.3. Frontier, 2006 WL 229501 at 3; Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp., 606 N.W.2d 359, 363 (Iowa 2000) (“when the language is plain and unambiguous, we do not look beyond the statute for its meaning”). The Plaintiff failed to cite adequate and updated case law pertaining to post-judgment interest and makes the same argument that the Iowa Court of Appeals directly referenced and struck down in 2006. See Frontier, 2006 WL 229501 at 3.

The Plaintiff again cites the outdated case Matter of Mt. Pleasant Bank & Tr. Co., which cites the former version of Iowa Code § 535.3 where post-judgment interest could be drawn “from the time the papers were filed.” 455 N.W.2d 680, 686 (Iowa 1990). The Plaintiff again attempts to use this case citation to undermine the current language of the statute for an older version to suit their claim. Currently, both case law and statutory provisions widely

address that post-judgment interest shall only accrue from the date of the judgment.

Schimmelpfennig v. Eagle Nat. Assur. Corp., 641 N.W.2d 814, 815 (Iowa 2002).

In seeking post-judgment interest, the Plaintiff cites Hart v. Cusick to establish aggregating pre- and post-judgment interest, but the court held that the prejudgment interest would be the rate set at the time of action, not the current interest rate to apply three years prior, as the Plaintiff alleges. 2012 WL 2122629 at 4. Nonetheless, that case is entirely separate from the current action: a suit on an unpaid invoice with the undisputed interest rate set on the invoice itself. Id. at 3. The Plaintiff relies on irrelevant and outdated case law to allege their entitlement to post-judgment interest for current rates applied to the petition filing date.

WHEREFORE the Defendants respectfully request that the Court deny the Plaintiff's Motion to Amend Judgment and the total judgment amount therefore totals \$85,000.00, and enter such further relief in Defendants' favor as the Court deems just and proper.

Dated: July 7, 2025

Respectfully submitted,

SULLIVAN & WARD, P.C.

By: /s/ David J. Hellstern

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ATTORNEYS FOR DEFENDANTS

Original filed: EDMS.

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2025, I electronically filed the foregoing with the Clerk of Court by using the Iowa Electronic Document Management System which will send a notice of electronic filing to the following. Per rule 16.315(1), this constitutes service of the document(s) for purposes of the Iowa Court Rules.

/s/ David J. Hellstern

IN THE IOWA DISTRICT COURT FOR CLAYTON COUNTY

<p>LORI POPE, Plaintiff, v. KATHRYN A KESSLER, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF GERALD EUGENE KESSLER, and JEROD KESSLER, Defendants.</p>	<p>Case No. CVCV011037</p> <p>REPLY BRIEF SUPPORTING PLAINTIFF'S MOTION TO AMEND JUDGMENT</p>
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Plaintiff Lori Pope (“Plaintiff”) provides the following reply brief in support of her Motion to Amend Judgment.

Defendants inaccurately argue that harm remedied by the jury’s verdict was incomplete until judgment entry. As was explained to Defendants several times during trial, Plaintiff’s property was converted—it stayed at Jerry’s farm, outside of her possession, use, and control—following her move in June 2022. Damages were completed at that time and gave rise to twin causes for damages in tort and unjust enrichment, which Plaintiff prevailed upon at trial. *Old Maint. Enterprises, LLC v. Orascom E&C USA, Inc.*, No. 316CV00014SMRCFB, 2019 WL 13169891, at *2 (S.D. Iowa Mar. 1, 2019); Restatement (Third) of Restitution and Unjust Enrichment § 40 (2011) (recognizing that cause of action accrues at the point in time when a benefit is gained by conversion). Indeed, there is no other time that these actions could accrue, and, relatedly, Defendants do not explain how these actions could accrue without damage being complete on that date—when Plaintiff was separated from her property interests. Because no dispute at trial existed that these damages occurred in June 2022, Plaintiff conservatively asks the Court to award pre-judgment interest beginning on July 1, 2022.

Defendants urge that because damages were unliquidated until the jury's verdict, they were not complete until the verdict too. Resistance at 2 ("[T]here is a crucial distinction between unliquidated claims and liquidated claims which should prevent pre-judgment interest in this matter"). On this point, Defendant's misread and misapply Iowa law.

As support, Defendants cite *Schimmelpfennig v. Eagle Nat. Assur. Corp.*, 641 N.W.2d 814, 816 (Iowa 2002) for the proposition that, "[i]n unliquidated claims, the interest begins to accrue when the amount becomes liquidated, which is the judgment date." Resistance at 2. That's wrong—it's not what *Schimmelpfennig* says. In *Schimmelpfennig*, the Court explains that "[o]ne exception" to the rule of interest running when claims are liquidated is when "damage for which recovery is demanded was complete at a definite time before the action was begun." 641 N.W.2d at 816. Thus, *Schimmelpfennig* stands for the proposition that Defendants' "unliquidated" and "liquidated" distinction is meaningless when damages were complete at a definite time, like this case. *Id.* *Schimmelpfennig* applies the rule that way too, allowing pre-judgment contract claim interest but denying pre-judgment interest on attorneys' fees because there wasn't evidence that the plaintiff paid those fees. *Id.* This case is therefore like *Schimmelpfennig* under a straightforward reading of it.

Should the Court need any additional authority, look to *Gosch v. Juelfs*, 701 N.W.2d 90, 92–93 (Iowa 2005). There, the Court explains again that "liquidated" and "unliquidated" terminology is meant to distinguish between damages that have been incurred (are complete, and therefore liquidated), and damages that are ongoing or projected to happen in the future (are incomplete, and needing the jury's judgment to liquidate in present value). *Id.*

Switching to post-judgment interest, the undersigned cannot be as critical of Defendants' briefing. A tip of the hat is in order, because yes, Defendant's are correct that the

sequence of amendments to Section 535.3 leaves the version applicable to this action without “commencement of the action” language. The amendment referenced in *Fed. Land Bank of Omaha v. Woods*, 520 N.W.2d 305 (Iowa 1994) is one of several prior amendments, which are not applicable to the currently amended text. As a result, five percent pre-judgment interest runs through June 9, 2025, with post-judgment interest accruing on the sum total thereafter. The updated math follows:

- Pre-judgment interest of \$12,505.44 (1,074 days between July 1, 2022 and June 9, 2025 at \$11.6438 per diem, which is the daily interest accrual of \$85,000 at 5% as set by Iowa Code section 535.2(1)(b)).
- Post-judgment interest of \$16.38 per diem on and after June 10, 2025 (calculated at the 6.13% post-judgment interest rate times the aggregate of the principal and pre-judgment interest amounts, \$97,505.44).

Thus, Plaintiff requests that the Court amend the judgment to reflect the foregoing interest and costs identified in Plaintiff's Motion (which Defendants do not dispute), totaling \$97,942.34 with \$16.38 per diem on and after June 10, 2025, plus any unassessed court costs that may exist assessed to Defendants.

Dated: July 17, 2025

SIMMONS PERRINE MOYER BERGMAN

/s/Abram V. Carls

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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2025, I electronically filed the foregoing with the Clerk of the Court by using the Iowa Electronic Document Management System which will send a notice of electronic filing to the following. Per rule 16.315(1), this constitutes service of the document(s) for purposes of the Iowa Court Rules.

/s/ Abram V. Carls

IN THE IOWA DISTRICT COURT FOR CLAYTON COUNTY

<p>LORI POPE, Plaintiff, v. KATHRYN A KESSLER, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF GERALD EUGENE KESSLER, and JEROD KESSLER, Defendants.</p>	<p>Case No. CVCV011037</p> <p>PLAINTIFF'S MOTION TO AMEND REPLY</p>
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Plaintiff Lori Pope (“Plaintiff”) respectfully requests leave to amend her reply brief to correct a math error in the undersigned’s interest calculations. At trial Plaintiff presented evidence that she moved in June 2021, the date her damages were complete, not June 2022, which is the date identified in her reply brief. By June 2022, the decedent had already passed. Plaintiff used the correct date in her Motion to Amend, but the undersigned used the incorrect year, 2022, in calculations stated in the reply brief.

The error impacts Plaintiff’s interest calculation, which is corrected as follows:

- Pre-judgment interest of \$16,755.43 (1,439 days between July 1, 2021 and June 9, 2025 at \$11.6438 per diem, which is the daily interest accrual of \$85,000 at 5% as set by Iowa Code section 535.2(1)(b)).
- Post-judgment interest of \$16.38 per diem on and after June 10, 2025 (calculated at the 6.13% post-judgment interest rate times the aggregate of the principal and prejudgment interest amounts, \$101,755.43).

Thus, Plaintiff requests that the Court amend her reply brief and amend the judgment to reflect the foregoing interest and costs identified in Plaintiff’s Motion (which Defendants do not dispute), totaling \$101,755.43 with \$16.38 per diem on and after June 10, 2025, plus

any unassessed court costs that may exist assessed to Defendants.

Dated: July 21, 2025

SIMMONS PERRINE MOYER BERGMAN

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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2025, I electronically filed the foregoing with the Clerk of the Court by using the Iowa Electronic Document Management System which will send a notice of electronic filing to the following. Per rule 16.315(1), this constitutes service of the document(s) for purposes of the Iowa Court Rules.

/s/ Abram V. Carls

IN THE IOWA DISTRICT COURT
FOR CLAYTON COUNTY

LORI POPE,)	
Plaintiff,)	CASE NO. CVCV011037
)	
vs.)	
)	
KATHRYN A KESSLER,)	
INDIVIDUALLY AND AS EXECUTOR)	ORDER FOR JUDGMENT
OF THE ESTATE OF GERALD)	
EUGENE KESSLER, and JEROD)	
KESSLER,)	
Defendants.)	

The Court entered an Order on Verdict on June 10, 2025 and set a deadline of June 27, 2025 for a written certification of allowable expenses, with any objections to claimed expenses to be filed within 10 days after the written certification is filed with the clerk. The Plaintiff filed a Motion to Amend Judgment and asked the Court to include prefiling interest and costs to the judgment. The Defendants timely filed a resistance and objects to the request for prefiling interest because there was no explicit date set when the Plaintiff's damages were complete. A video conference hearing on the issue was held on August 4, 2025 and a formal record was made of the proceeding. Attorney Abram Carls appeared for the Plaintiff and attorney David Hellstern appeared for the Defendants.

The Plaintiff argues that she should be entitled to prefiling interest from the date she moved out of the house in June 2021. For simplicity in establishing a damages date, the Plaintiff asks the Court order interest on damages awarded by the jury be computed from July 1, 2021, even though the Plaintiff moved out a few weeks before that date. She argues that her damages were complete on this date because the Defendants were enriched and she was denied her property from that date. The Defendants argue there can be no damages until there is a judgment. Therefore, they ask the Court to deny the request for prefiling interest and assess interest from the date of the judgment.

Generally, "interest runs from the time money becomes due and payable, and in the case of unliquidated claims this is the date they become liquidated, ordinarily the date

of judgment...."¹ One exception to this rule is recognized 'in cases in which the entire damage for which recovery is demanded was complete at a definite time before the action was begun.' "² By its nature, the claim of unjust enrichment assumes someone has a historical deprivation of their benefits which logic may dictate that interest should be computed on those items from the time the deprivation is incurred."³ However in this case, the evidence presented and considered by the jury provides a factual variation in the length of time the Defendants were enriched. Evidence was presented that the Defendants offered to drop off the Plaintiff's property at a mutual location, however, the Plaintiff declined and wanted to pick her property up at the farm. The Court has no way now of knowing whether those facts played into the damage awarded by the jury.⁴ The Plaintiff did not ask that the jury receive a special interrogatory or verdict form to disclose when the damages from unjust enrichment occurred and whether they were continuous from the point the Plaintiff moved out. Without asking the jury through a special interrogatory of what dates in time they used to arrive at their damage verdict, the Court has no way of knowing when the damages occurred or whether they were continuous from the time she moved out. The Court finds no authority on point on this issue. Therefore, the Court finds judgment should now be entered as set forth below.

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Judgment is entered against the Defendants and in favor of Plaintiff, for the Unjust Enrichment Claim, in the amount of \$85,000, plus interest at the rate of 6.08% from the date of judgment, or June 10, 2025.
2. In regard to costs, each party prevailed on one claim by jury verdict. Therefore, Judgment is entered against the Plaintiff and Defendants for costs. Each party is responsible for payment of 50% of the total costs.

¹ Midwest Mgmt. Corp. v. Stephens, 353 N.W.2d 76, 83 (Iowa 1984) citing Mrowka v. Crouse Cartage Co., 296 N.W.2d 782, 783 (Iowa 1980) (quoting Bridenstine v. Iowa City Electric Ry., 181 Iowa 1124, 1136, 165 N.W. 435, 439 (1917), rev'd on other grounds.

² Id.

³ Mrowka v. Crouse Cartage Co., 296 N.W.2d 782, 784 (Iowa 1980).

⁴ Id. at 785.



State of Iowa Courts

Case Number

CVCV011037

Type:**Case Title**LORI POPE VS KATHRYN KESSLER ET AL
ORDER FOR JUDGMENT

So Ordered

Melissa Anderson-Seeber, District Court Judge
First Judicial District of Iowa

Electronically signed on 2025-09-24 14:07:03