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*Attorneys for Appellant Sarah Janeen Rose
in Conjunction with the Legal Aid Center of
Southern Nevada Pro Bono Project*

IN THE SUPREME COURT OF THE STATE OF NEVADA

SARAH JANEEN ROSE, an individual,

Appellant,

vs.

DAVID JOHN ROSE, an individual,

Respondent.

Supreme Court No. 81859

District Court No. A-20-815750-C

Electronically Filed
Oct 21 2020 02:34 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT SARAH JANEEN ROSE'S DOCKETING STATEMENT

1. Judicial District:

Eighth Judicial District Court

County – Clark

Department – XII

Judge – The Honorable Elizabeth Gonzalez

District Court Case No. A-20-815750-C

2. Attorney(s) filing this Docketing Statement:

Appellant Sarah Janeen Rose (“Sarah”) is represented by Dennis L. (Nevada Bar No. 1462) and Paul C. Williams (Nevada Bar No. 12524) of BAILEY ❖ KENNEDY LLP, 8984 Spanish Ridge Avenue, Las Vegas, Nevada 89148.

3. Attorney(s) representing Respondent:

Respondent David John Rose (“David”) is represented by H. Stan Johnson (Nevada Bar No. 265) and Ryan D. Johnson (Nevada Bar No. 14724) of COHEN|JOHNSON|PARKER|EDWARDS, 375 East Warm Springs Road, Suite 104, Las Vegas, Nevada 89119.

4. Nature of disposition:

Denial, in part, of special motion to dismiss filed pursuant to NRS 41.660 (anti-SLAPP).

5. Does this appeal raise issues concerning Child Custody, Venue, or Termination of Parental Rights:

No.

6. Pending and prior proceedings in this Court:

Not applicable.

7. Pending and prior proceedings in other courts:

David Rose v. Sarah Rose, D-17-547250-D, currently pending in the Eighth Judicial District Court of Nevada, Family Division.

8. Nature of the action:

This case concerns a Memorandum of Understanding (“MOU”) and a Stipulated Decree of Divorce (the “Divorce Decree”) entered in a related divorce action, *David Rose v. Sarah Rose*, Case No. D-17-547250-D (the “Divorce Action”), which is currently pending before the Family Division of the Eighth Judicial District Court (the “Family Court”). David contends that Sarah and her former counsel in the Divorce Action breached the MOU by

1 inserting language in the Divorce Decree that provided Sarah with survivor
2 benefits under David’s Public Employees Retirement System (“PERS”)
3 pension—even though the MOU does not contain any terms or references to
4 survivor benefits under David’s PERS pension. David has a pending motion to
5 set aside the Divorce Decree in the Divorce Action.

6 David initially asserted a claim for civil conspiracy and breach of
7 contract against Sarah and her former counsel. David also asserted claims for
8 legal malpractice against his former counsel in the Divorce Action based on
9 the same issue (that Sarah was awarded survivor benefits under the terms of
10 the Divorce Decree).

11 On July 6, 2020, Sarah filed a Special Motion to Dismiss Pursuant to
12 NRS 41.660 (Anti-SLAPP), or, in the Alternative, Motion to Dismiss Pursuant
13 to NRCP 12(b)(1) and NRCP 12(b)(5) (the “Special Motion to Dismiss”).

14 On August 27, 2020, the district court entered an Order Granting in Part,
15 and Denying in Part, Defendant Sarah Janeen Rose’s Special Motion to
16 Dismiss Pursuant to NRS 41.660 (anti-SLAPP) (the “Order”). In essence, the
17 district court found David’s civil conspiracy claim against Sarah was subject to
18 Nevada’s anti-SLAPP statute, but that his breach of contract claim was not.

1 (*See generally* Order.) The district court dismissed David’s civil conspiracy
2 claim because David “failed to demonstrate, with ‘prima facie evidence,’ that
3 he ha[d] a ‘probability of prevailing.’” (*Id.* at 6:3 – 7:2 (quoting NRS
4 41.660(3)(c)).)

5 Sarah now appeals the portions of the Order that found David’s breach
6 of contract claim was not subject to a special motion to dismiss under
7 Nevada’s anti-SLAPP statute (*see* Order at 5:26 – 6:2) and denied Sarah’s
8 Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP) as to
9 David’s breach of contract claim against Sarah (*see id.* at 7:8-9).

10 **9. Issues on appeal:**

11 The District Court erred by finding that David’s breach of contract claim
12 was not subject to the anti-SLAPP statute and by denying Sarah’s Special
13 Motion to Dismiss as to David’s breach of contract claim.

14 **10. Pending proceedings in this Court raising the same or similar**
15 **issues:**

16 None known.

17 **11. Constitutional issues:**

18 Not applicable.

1 **12. Other issues:**

2 The District Court lacks subject matter jurisdiction to address David’s
3 breach of contract claim because the entry of the Divorce Decree—which did
4 not direct the survival of the MOU—destroyed the independent contractual
5 nature of the MOU. *See Day v. Day*, 80 Nev. 386, 389-90, 395 P.2d 321, 322-
6 23 (1964). As a result, David cannot use contract principles to collaterally
7 attack the Divorce Decree. *See Vaile v. Porsboll*, 128 Nev. 27, 33 n.7, 268
8 P.3d 1272, 1276 n.7 (2012).

9 **13. Assignment to the Court of Appeals or retention in the**
10 **Supreme Court:**

11 Nevada’s anti-SLAPP statute creates an interlocutory appeal to the
12 Supreme Court where a district court denies a special motion to dismiss. NRS
13 41.660(4) (“If the court denies the special motion to dismiss filed pursuant
14 to NRS 41.660, an interlocutory appeal lies to the *Supreme Court*.”) (emphasis
15 added). Additionally, pursuant to NRAP 17(a)(12), this matter should be heard
16 by the Nevada Supreme Court as it raises issues of statewide public
17 importance; specifically, whether Nevada’s anti-SLAPP statute applies to
18 breach of contract claims.

14. Trial:

Not applicable.

15. Judicial disqualification:

Not applicable.

16. Date of entry of written judgment or order appealed from:

August 27, 2020.

17. Date written notice of entry of judgment or order served:

August 27, 2020.

18. If the time for filing the notice of appeal was tolled by a post judgment motion:

Not applicable.

19. Date notice of appeal was filed:

September 25, 2020.

20. Specify statute or rule governing the time limit for filing the notice of appeal:

NRAP 4(a)(1).

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

3 NRS 41.660(4).

4 **22. List all parties involved in the action in the district court:**

5 **a) Parties:**

6 *i. Plaintiff:* David John Rose.

7 *ii. Defendants*

8 1. Sarah Janeen Rose

9 2. Regina McConnell, Esq.

10 3. McConnell Law Ltd.

11 4. Shelly Booth Cooley Esq. (dismissed)

12 5. The Cooley Law Firm (dismissed)

13 6. Doe Individuals I through X

14 7. Roe Corporations XI through XX

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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:

This is an appeal of the Court's partial denial of Sarah's Special Motion to Dismiss. While Defendants Regina McConnell, Esq., and McConnell Law Ltd. joined in Sarah's Special Motion to Dismiss, they have not filed a notice of appeal—likely because Sarah's Special Motion to Dismiss did not address David's claims against them and their participation is unnecessary.

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:

David's Claims Against Sarah:

1. Breach of Contract: Special Motion to Dismiss denied on August 27, 2020. NRCP 12(b)(5) Motion to Dismiss pending before the District Court.
2. Civil Conspiracy (civil conspiracy-to-defraud): Special Motion to Dismiss granted on August 27, 2020.

1 *Sarah's counterclaims against David:*

2 Sarah currently has no counterclaims against David. However, if
3 Sarah's pending NRCP 12(b)(5) motion to dismiss against David is denied,
4 Sarah intends to assert counterclaims against David.

5 **24. Did the judgment or order appealed from adjudicate ALL the**
6 **claims alleged below and the rights and liabilities of ALL the parties to the**
7 **action below:**

8 No.

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

10 **(a) Specify the claims remaining pending below:**

- 11 1. Negligence (David vs. Regina McConnell, Esq., and
12 McConnell Law Ltd.)
- 13 2. Breach of Fiduciary Duty/Breach of Duty of Loyalty
14 (David vs. Regina McConnell, Esq., and McConnell
15 Law Ltd.)
- 16 3. Breach of Contract (David vs. Regina McConnell,
17 Esq., and McConnell Law Ltd.)
- 18 4. Breach of Contract (David vs. Sarah)

(b) Specify the parties remaining below:

1. David
2. Sarah
3. Regina McConnell, Esq.
4. McConnell Law Ltd.

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

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?

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)):

Nevada’s anti-SLAPP statute creates an interlocutory appeal to the Supreme Court where a district court denies a special motion to dismiss. NRS

1 41.660(4) (“If the court denies the special motion to dismiss filed pursuant
2 to NRS 41.660, an interlocutory appeal lies to the Supreme Court.”)

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

4 ➤ *The latest-filed complaint, counterclaims, cross-claims, and*
5 *third-party claims:*

6 Exhibit A – Complaint

7 ➤ *Any tolling motion(s) and order(s) resolving tolling motion(s):*

8 Not applicable.

9 ➤ *Orders of NRCP 41(a) dismissals formally resolving each*
10 *claim, counterclaims, cross-claims and/or third-party claims*
11 *asserted in the action or consolidated action below, even if not*
12 *at issue on appeal:*

13 Not applicable.

14 ➤ *Any other order challenged on appeal:*

15 Exhibit B – Order Granting in Part, and Denying in Part,

16 Defendant Sarah Janeen Rose’s Special Motion to Dismiss

17 Pursuant to NRS 41.660 (anti-SLAPP).
18

Exhibit C – Notice of Entry of Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose’s Special Motion to Dismiss Pursuant to NRS 41.660 (anti-SLAPP).

/ / /

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.

DATED this 21st day of October, 2020.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

*Attorneys for Appellant Sarah Janeen Rose
in Conjunction with the Legal Aid Center of
Southern Nevada Pro Bono Project*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 21st day of October, 2020, service of the foregoing was made by electronic service through Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

H. STAN JOHNSON
RYAN D. JOHNSON
COHEN|JOHNSON|PARKER|EDWARDS
375 East Warm Springs Road, Suite 104
Las Vegas, NV 89119

Email:
sjohnson@cohenjohnson.com
rjohnson@cohenjohnson.com

*Attorneys for Respondent
David John Rose*

M. NELSON SEGEL
6440 Sky Pointe Dr., Ste. 140-238
Las Vegas, NV 89131

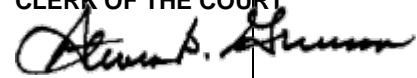
Email:
mediator@nelsonsegel.com

Settlement Judge

/s/ Sharon Murnane
An Employee of BAILEY ♦ KENNEDY

Exhibit A

Exhibit A



COMP
COHEN|JOHNSON|PARKER|EDWARDS
JAMES L. EDWARDS, ESQ.
State Bar No. 4256
ADAM C. EDWARDS, ESQ.
State Bar No.: 15405
375 E. Warm Springs Rd. Suite 104
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400
Attorneys for Plaintiffs

CASE NO: A-20-815750-C
Department 11

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,
Plaintiff,

Case No.:

vs.

Dept. No.:

REGINA McCONNELL, ESQ., an individual;
McCONNELL LAW LTD., a Nevada limited
liability company; SHELLY BOOTH
COOLEY, ESQ., an individual; THE COOLEY
LAW FIRM; a Nevada Professional Limited
Liability Company; SARAH JANEEN ROSE,
an individual; DOE INDIVIDUALS I through
X and ROE CORPORATIONS XI through XX,

COMPLAINT

Defendants

COMES NOW, Plaintiff DAVID JOHN ROSE by and through his attorneys of record,
James L. Edwards, Esq. of the law firm of Cohen Johnson Parker Edwards files this Complaint
against Defendants REGINA McCONNELL, ESQ., attorney at law, McCONNELL LAW LTD.,
SHELLY BOOTH COOLEY, ESQ., attorney at law, THE COOLEY LAW FIRM, SARAH
JANEEN ROSE, an individual, DOE INDIVIDUALS I through X, and ROE CORPORATIONS
XI through XX, and alleges as follows:

COMPLAINT - 1

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I.

INTRODUCTION

1. Plaintiff DAVID JOHN ROSE is a resident of Clark County, Nevada.

2. Defendant REGINA McCONNELL, ESQ., at all times pertinent hereto, was a resident of Clark County, Nevada, and a licensed attorney practicing in the State of Nevada.

3. Defendant McCONNELL LAW LTD. is a Nevada limited liability company, and law firm, located in Clark County, Nevada.

4. Defendant SHELLY BOOTH COOLEY, ESQ., at all times pertinent hereto, was a resident of Clark County, Nevada, and a licensed attorney practicing in the State of Nevada.

5. Defendant THE COOLEY LAW FIRM is a Nevada professional limited liability company, and law firm, located in Clark County, Nevada.

6. Defendant SARAH JANEEN ROSE is a resident of Clark County, Nevada.

7. The true identities of DOES I-X, and ROE CORPORATIONS XI-XX, are unknown to Plaintiff, but such individuals and companies were either retained or hired to represent Plaintiff in a marriage dissolution action negligently represented Plaintiff; retained or hired to represent another party in the same marriage dissolution action and acted fraudulently against Plaintiff; or were otherwise involved and tortuously damaged Plaintiff.

8. Each of the defendants are the principals and/or agents of each other.

II.

FACTUAL BACKGROUND

9. Plaintiff DAVID JOHN ROSE retained Defendants to represent him in a marital dissolution action (Case No. D-17-547250-D).

1 10. On March 23, 2018, Plaintiff and his then wife, Defendant SARAH JANEEN
2 ROSE (“SARAH”), participated in mediation to resolve the division of community property and
3 other issues. Defendant McConnell attended the mediation as Plaintiff’s counsel.
4

5 11. As a member of the Las Vegas Metropolitan Police Department (“LVMPD”),
6 Plaintiff was enrolled in the Public Employees Retirement System (“PERS”). His PERS pension
7 was an asset of the community and subject to division.
8

9 12. During the mediation, SARAH raised the issue of survivorship benefits and asked
10 Plaintiff to name her as the survivor beneficiary. Survivor benefits are not an asset of the
11 community; thus, SARAH had no right to them.
12

13 13. Plaintiff refused to grant survivor benefits to SARAH.
14

15 14. Over the course of several hours, the parties reached a resolution as to division of
16 community assets and other issues. Plaintiff and SARAH agreed that SARAH would NOT have
17 any survivorship benefits to Plaintiff’s PERS account. Mediator Rhonda W. Forsberg, Esq.,
18 drafted a Memorandum of Understanding (“MOU”) memorializing the terms of the agreement.
19 A copy of the March 23, 2018, MOU is attached hereto as **Exhibit “1”** and incorporated herein
20 by this reference.
21

22 15. After the parties, their attorneys, and the mediator executed the MOU, SARAH’s
23 attorney, SHELLY BOOTH COOLEY, drafted a Decree of Divorce, the terms of which were to
24 mirror those of the MOU. A copy of the Decree of Divorce is attached hereto as **Exhibit “2”** and
25 incorporated herein by this reference.
26

27 16. In drafting the Decree, SARAH’s attorney, SHELLEY BOOTH COOLEY, ESQ.,
28 included the following language:

 b) One-half of the community portion, as defined within Nevada law as
 articulated in Gemma v. Gemma, 105 Nev. 458 (1989), and Fondi v. Fondi, 106

1 Nev. 856 (1990), in DAVID JOHN ROSE's Las Vegas Metropolitan Police
2 Department Public Employees' Retirement System of Nevada Pension benefits,
3 **said pension benefits to be divided pursuant to a Qualified Domestic**
4 **Relations Order ("QDRO"), based upon a selection of Option 2 being made**
5 **at the time of retirement so as to name SARAH JANEEN ROSE as the**
6 **irrevocable survivor beneficiary of DAVID JOHN ROSE' pension benefits**
7 **upon death, to divide said retirement account.**
8 [Emphasis added].

9 17. As set forth, above, in paragraphs 12, 13 and 14, the parties did not agree that
10 SARAH would be named as Plaintiff's survivor beneficiary to his PERS pension. As such, that
11 term was not included in the MOU.

12 18. Upon Defendant MCCONNELL's advice, Plaintiff signed the Decree of Divorce
13 as prepared by Ms. Cooley. Defendant MCCONNELL stated she would review the Decree for
14 accuracy before submitting it to Ms. Cooley.

15 19. Defendant MCCONNELL signed the Decree and submitted it to Ms. COOLEY.

16 20. The Decree of Divorce was filed, and noticed, on April 11, 2018.

17 21. Sometime thereafter, Defendant MCCONNELL realized her error in advising
18 Plaintiff to sign the Decree of Divorce as drafted by Ms. COOLEY. Accordingly, on April 15,
19 2018, Defendant MCCONNELL filed a *Motion to Set Aside the Paragraph Regarding Survivor*
20 *Benefits in the Decree of Divorce Based Upon Mistake*. A copy of said motion is attached hereto
21 as **Exhibit "3"** and is incorporated herein by this reference.

22 22. Defendant MCCONNELL admitted her negligence in Exhibit "3." Specifically,
23 she wrote,

24
25 Unfortunately, upon a later reading of the Decree, it came to undersigned
26 counsel's attention that Sarah had included an award of the PERS survivor benefit
option, even though it was never agreed upon. Page 3, lines 22 – 24.

27 Defendant MCCONNELL went on to write,

1 Further, the Decree states that David is awarded one-half of the community
2 portion of his LVMPD pension pursuant to Gemma v Gemma and Fondi v Fondi
3 and based upon a selection of Option 2 being made at the time of retirement so as
4 to name Sarah as the irrevocable survivor beneficiary. This was not included in
5 the Memorandum because it was not agreed upon by the parties at the time of the
6 mediation. Therefore, David requests that this paragraph be set aside as it was not
7 agreed upon and it was mistakenly included and not noticed upon signing. Page 3,
8 lines 27 – 28 and page 4, lines 1 – 5.

9 * * *

10 Unfortunately, when reviewing the Decree, counsel inadvertently did not see that
11 the option for survivor benefits was listed and awarded to Sarah. Page 6, lines 3 –
12 4.

13 **III.**

14 **FIRST CLAIM FOR RELIEF**

15 **(negligence)**

16 23. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 22
17 and incorporate the same as if fully plead herein.

18 24. Defendants REGINA McCONNELL, ESQ. and McCONNELL LAW, LTD.
19 owed a duty of care to Plaintiff to exercise reasonable judgment and diligence expected of an
20 attorney licensed to practiced law in Nevada.

21 25. Defendants REGINA McCONNELL, ESQ. and McCONNELL LAW, LTD.
22 breached that duty in several respects, including, but not limited to:

23 a. Failing to actively participate in drafting the Decree to ensure the agreed upon
24 terms are properly reflected in the final draft;

25 b. Failing to properly read, review, and object to the Decree that contained
26 unfavorable terms that Plaintiff did not agree to;

27 c. Advising Plaintiff to sign the Decree that contained unfavorable terms that
28 Plaintiff did not agree to.

26. Defendants' breach of her duty owed to Plaintiff proximately caused injury to Plaintiff.

27. Plaintiff has suffered past, and future, damages in excess of \$10,000.00 as a result of Defendant's breach.

28. Plaintiff has been required to employ the services of an attorney to represent their interests.

IV.

SECOND CLAIM FOR RELIEF

(Breach of Fiduciary Duty/Breach of Duty of Loyalty)

29. Plaintiff repeats and realleges paragraphs 1 through 28 and incorporate them into this claim as if fully plead herein.

30. Defendants REGINA McCONNELL, ESQ. and McCONNELL LAW LTD. owed a continuing fiduciary duty and loyalty to him.

31. A fiduciary relationship exists when one has a right to expect trust and confidence in the integrity and fidelity of another.

32. Attorneys owe a fiduciary duty to their clients and a duty of loyalty.

33. As Plaintiff's attorneys, REGINA McCONNELL, ESQ. and McCONNELL LAW, LTD. breached these duties as described herein.

34. These breaches of duties caused Plaintiff significant damages in excess of \$10,000.00.

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V.

THIRD CLAIM OF RELIEF

(breach of contract)

35. Plaintiff repeats and realleges paragraphs 1 through 34 and incorporate them into this claim as if fully plead herein.

36. Plaintiff and Defendants REGINA McCONNELL, ESQ. and McCONNELL LAW, LTD. entered into a contract wherein Defendants REGINA McCONNELL, ESQ. and McCONNELL LAW, LTD. agreed to perform legal services on Plaintiff's behalf.

37. Defendants REGINA McCONNELL, ESQ. and McCONNELL LAW, LTD. breached the contract in several respects, including, but not limited to:

- a. Failing to maintain a level of competence expected of a licensed attorney;
- b. Failing to properly review a legally binding document before Plaintiff signed such document; and
- c. Failing to give informed advice to Plaintiff.

38. Defendants REGINA McCONNELL, ESQ. and McCONNELL LAW, LTD.s' breach of the contract has caused Plaintiff both incidental and consequential damages in excess of \$10,000.00.

39. It has become necessary for Plaintiff to retain the services of attorneys to prosecute this action.

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1 **VI.**

2 **FOURTH CLAIM OF RELIEF**

3 **(Civil Conspiracy)**

4
5 40. Plaintiff repeats and realleges paragraphs 1 through 39 and incorporate them into
6 this claim as if fully plead herein.

7 41. Defendant SARAH and her representatives, Defendants SHELLEY BOOTH
8 COOLEY, ESQ. and THE COOLEY LAW FIRM, acted in concert to intentionally defraud
9 Plaintiff into signing the legally binding Decree of Divorce with terms that were not agreed to.

10
11 42. SARAH and her representatives, Defendants SHELLEY BOOTH COOLEY,
12 ESQ. and THE COOLEY LAW FIRM, had no intention of abiding to the agreed upon terms as
13 outlined in the MOU.

14 43. As a direct and proximate result of the aforementioned conduct of SARAH and
15 her representatives, Defendants SHELLEY BOOTH COOLEY, ESQ. and THE COOLEY LAW
16 FIRM, Plaintiff has suffered financial damages and loss, and will be forced to continue to suffer
17 financial damages and loss in order to rescind the fraudulent terms of the Decree of Divorce.
18

19 **VII.**

20 **FIFTH CLAIM OF RELIEF**

21 **(breach of contract)**

22
23 44. Plaintiff repeats and realleges paragraphs 1 through 43 and incorporate them into
24 this claim as if fully plead herein.

25 45. Plaintiff and Defendants SARAH, SHELLEY BOOTH COOLEY, ESQ., and THE
26 COOLEY LAW FIRM entered into a contract wherein Defendants agreed that SARAH would
27 NOT receive survivorship benefits under Plaintiff's PERS account, as outlined in the MOU.
28

1 46. Defendant breached the contract in several respects, including, but not limited to:

2 a. Drafting the Decree of Divorce, which contained terms that SARAH
3 would be entitled to survivorship benefits under Plaintiff's PERS account;

4 b. Submitting the Decree of Divorce so that its terms become legally
5 enforceable;

6 c. Seeking to enforce the survivorship benefit from the Decree, despite being
7 contradictory to the agreed upon terms of the MOU.
8

9 47. Defendant breach of the contract has caused Plaintiff both incidental and
10 consequential damages in excess of \$10,000.00.
11

12 48. It has become necessary for Plaintiff to retain the services of attorneys to
13 prosecute this action.

14 WHEREFORE, Plaintiffs respectfully pray that they have judgment against Defendant as
15 follows:
16

17 1. All consequential and incidental damages incurred by Plaintiff;

18 2. Past and future general damages in excess of \$10,000.00;

19 3. Past and future special damages in excess of \$10,000.00;

20 4. Reasonable attorney fees;

21 5. Costs associated with prosecuting the matter; and

22 6. For such other relief as this Court deems proper.
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1 Dated this 13th day of May, 2020.

2 **COHEN|JOHNSON|PARKER|EDWARDS**

3
4
5 /s/ James L. Edwards, Esq.

6 JAMES L. EDWARDS, ESQ.

7 State Bar No. 4256

8 ADAM C. EDWARDS, ESQ.

9 State Bar No.: 15405

10 375 E. Warm Springs Rd., Suite 104

11 Las Vegas, NV 89119

12 *Attorneys for Plaintiffs*

Exhibit 1

MEMORANDUM OF UNDERSTANDING

The parties, David Rose ("David") and Sarah Rose ("Sarah"), have met in mediation to resolve certain disputes and entered into an agreement in case Number D-17-547250-D in Dept. I of the Eighth Judicial District Court, Clark County, Nevada, on March 23, 2018. By this memorandum, the parties desire to memorialize their agreement resolving all issues in the above referenced case. The memorandum addresses the material terms of the agreement, and is intended to bind the parties to those terms. The parties agree, however, that counsel for Sarah shall draft a final formal agreement incorporating the terms herein. That agreement shall be ratified by the Court, but shall not merge and shall retain its separate nature as a contract.

1. The parties agree to the following:

SARAH shall receive as her sole and separate property, free of all claims of David, the following:

- (1) 2012 Scion;
- (2) Any and all furniture and furnishings in her possession;
- (3) Her interest in his Nevada PERS pursuant to *Gemma v. Gemma*;
- (4) All bank accounts in her name;

David shall receive as his sole and separate property, free of all claims of Sarah, the following:

- (1) 2015 Dodge Challenger;
- (2) Any and all furniture and furnishings in his possession;
- (3) His interest in his Nevada PERS pursuant to *Gemma v. Gemma*;
- (4) All bank accounts in his name;

2. David shall receive \$5,000 from the approximate \$54,868.45 in proceeds of the marital home and Sarah shall receive the remainder. Of the remainder of the sale proceeds, \$22,434.22 shall be as and for lump sum non-modifiable alimony. The parties agree that the alimony amount shall be tax deductible to David and taxed as income to Sarah.

3. David shall pay \$1,886.00 per month for child support effective April 1, 2018. David Shall also pay \$13,000 in constructive child support arrears. The arrears shall be payable in monthly payments of \$270.00 for 48 months commencing April 1, 2018.

4. The parties dog shall travel with the children between homes once Sarah has her own home. If either party no longer wants the dog there is a "free" right of first refusal to the other party.

5. Each party shall be responsible for their separate debt including the debt on their respective vehicles and any and all credit card debt.

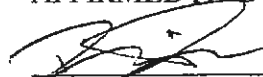
6. The parties shall follow and be subject to Department I's Behavior Order.

7. Sarah is waiving her community waste claim.

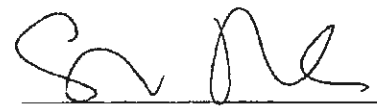
8. Each party shall be responsible for their own respective attorney's fees.

9. Each party acknowledges that they have been represented by counsel in the negotiation and preparation of this agreement, and voluntarily enters the agreement with full understanding of its terms. This agreement may be executed in counterparts.

AFFIRMED AND AGREED




DAVID ROSE
Dated: 3-23-18




SARAH ROSE
Dated: 03/23/2018

Approved as to Form and Content:



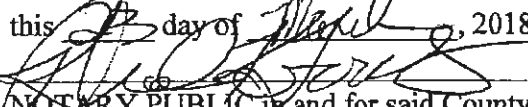
REGINA M. McConnell, ESQ.
Counsel for David Rose



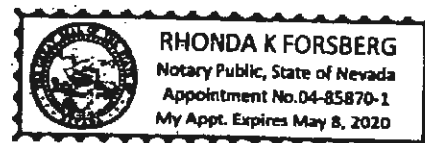
SHELLY BOOTH COOLEY, ESQ.
Counsel for Sarah Rose

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

DAVID ROSE did appear before me on the date set forth below, provided appropriate identification, and did sign the foregoing Marital Settlement Agreement as acknowledgement and agreement with its terms.

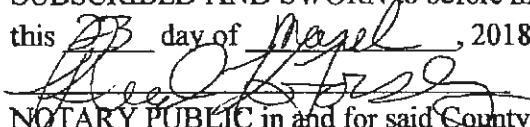
SUBSCRIBED AND SWORN to before me
this 23 day of March, 2018


NOTARY PUBLIC in and for said County and State



SARAH ROSE did appear before me on the date set forth below, provided appropriate identification, and did sign the foregoing Marital Settlement Agreement as acknowledgement and agreement with its terms.

SUBSCRIBED AND SWORN to before me
this 23 day of April, 2018.


NOTARY PUBLIC in and for said County and State

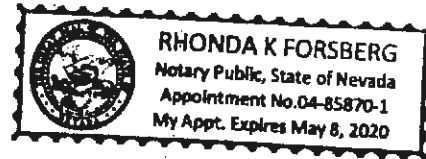


Exhibit 2



1 **DECD**
2 **THE COOLEY LAW FIRM**
3 Shelly Booth Cooley
4 Nevada State Bar No. 8992
5 10161 Park Run Drive, Suite 150
6 Las Vegas, Nevada 89145
7 Telephone Number: (702) 265-4505
8 Facsimile Number: (702) 645-9924
9 E-mail: scooley@cooleylawlv.com
10 Attorney for Defendant,
11 **SARAH JANEEN ROSE**

12
13 **DISTRICT COURT**
14 **FAMILY DIVISION**
15 **CLARK COUNTY, NEVADA**

16 **DAVID JOHN ROSE,**

Case No. D-17-547250-D

Dept No. I

17 Plaintiff,

18 vs.

Date of Hearing: N/a

Time of Hearing: N/a

19 **SARAH JANEEN ROSE,**

20 Defendant.

21
22 **STIPULATED DECREE OF DIVORCE**

23 The above captioned matter having come before this Honorable
24 Court upon the Complaint for Divorce of the Plaintiff, DAVID JOHN
25 ROSE, represented by his counsel of record, Regina M. McConnell, and
26 McConnell Law Group, Ltd., and Defendant, SARAH JANEEN ROSE,
27
28

Non-Trial Dispositions: ☐ Other ☐ Dismissed - Want of Prosecution ☐ Involuntary (Statutory) Dismissal ☐ Default Judgment ☐ Transferred
Settled/Withdrawn: ☒ Without Judicial Conf/Hrg ☐ With Judicial Conf/Hrg ☐ By ADR
Trial Dispositions: ☐ Disposed After Trial Start ☐ Judgment Reached by Trial

1 represented by her counsel of record, Shelly Booth Cooley, and The Cooley
2 Law Firm, and having filed her Answer in the time allotted by law; and
3 the Court having considered the Stipulation of the parties and being fully
4 advised in the premises FINDS, ORDERS and DECREES as follows:
5

6
7 **I. FACTS OF CASE**

8 DAVID JOHN ROSE and SARAH JANEEN ROSE were married on
9 the 17th day of June, 2006, in the City of Las Vegas, County of Clark, State
10 of Nevada. A Complaint for Divorce was filed by Plaintiff, DAVID JOHN
11 ROSE, in this action on 02/22/2017. Defendant, SARAH JANEEN ROSE,
12 filed her Answer and Counterclaim for Divorce on 09/26/2017. Plaintiff,
13 DAVID JOHN ROSE, filed an Affidavit in support his residency on
14 03/23/2018.
15

16 DAVID JOHN ROSE's current address is 8059 Torremolinos
17 Avenue, Las Vegas, Nevada. SARAH JANEEN ROSE's current address
18 is 63 Wyoming Avenue, Henderson, Nevada.
19

20 The Court FINDS that DAVID JOHN ROSE is age 32, and is
21 employed on a full-time basis with Las Vegas Metropolitan Police
22 Department as a Sergeant. SARAH JANEEN ROSE is age 29, and is
23 employed on a full-time basis with Academica-Doral Academy Pebble
24 Campus.
25
26
27
28

1 The parties have three (3) minor children born the issue of this
2 marriage: DAVID JAMES ROSE, date of birth: 04/12/2007; CARSON
3 DAVID ROSE, date of birth: 04/12/2007; and, LILY PAIGE ROSE, date of
4 birth: 05/24/2011. The parties have no adopted children, SARAH JANEEN
5 ROSE is not now pregnant and the parties are not Intended Parents.
6
7

8 **II. FINDINGS OF FACT, CONCLUSIONS OF LAW**
9 **AND ORDERS OF THE COURT**

10 The Court FINDS that it has both personal jurisdiction over the
11 parties and subject matter jurisdiction over this divorce action.
12

13 The Court FINDS that DAVID JOHN ROSE and SARAH JANEEN
14 ROSE are incompatible in their tastes, natures, views, likes and dislikes,
15 which have become so widely separate and divergent that the parties have
16 been and are now incompatible to such an extent that it now appears that
17 there is no possibility of reconciliation between DAVID JOHN ROSE
18 and SARAH JANEEN ROSE, and there remains such an incompatible
19 temperament between the DAVID JOHN ROSE and SARAH JANEEN
20 ROSE that a happy marital relationship and status can no longer exist.
21 The parties are entitled to a Decree of Divorce on the grounds of
22 incompatibility.
23
24
25
26

27 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
28 DECREED that the bonds of matrimony now and heretofore existing

1 between DAVID JOHN ROSE and SARAH JANEEN ROSE be dissolved;
2 that DAVID JOHN ROSE is granted an absolute Decree of Divorce; and
3 that each of the parties hereto be restored to the status of a single,
4 unmarried person.
5

6
7 THE COURT FINDS that there are three (3) minor children born
8 the issue of this marriage: DAVID JAMES ROSE, date of birth:
9 04/12/2007; CARSON DAVID ROSE, date of birth: 04/12/2007; and, LILY
10 PAIGE ROSE, date of birth: 05/24/2011. The parties have no adopted
11 children, SARAH JANEEN ROSE is not now pregnant and the parties are
12 not Intended Parents.
13

14
15 The Court FINDS that the parties' have resolved their child custody
16 issues by its entry of the Stipulated Parenting Agreement filed
17 10/30/2017, a copy of which is attached hereto as **Exhibit "A"** the terms
18 of the Stipulated Parenting Agreement are ratified, confirmed, and
19 approved by the Court at this time, and the same is incorporated into this
20 Decree of Divorce as though the same were set forth in this Decree in full.
21

22
23 The Court FINDS that there is community property and community
24 debt to be adjudicated by this Court.
25

26 The Court FINDS that the parties' have resolved all other issues,
27 including, but not limited to, child support, division of assets and debts,
28

1 marital waste claims, alimony and attorneys's fees and costs as is
2 memorialized by the Memorandum of Understanding, a copy of which is
3 attached hereto as **Exhibit "B."**

4
5 **A. Child Custody**

6
7 The parties' have resolved their child custody issues by its entry of
8 the Stipulated Parenting Agreement filed 10/30/2017, a copy of which is
9 attached hereto as **Exhibit "A."** The terms of the Stipulated Parenting
10 Agreement are ratified, confirmed, and approved by the Court at this
11 time, and the same is incorporated into this Decree of Divorce as though
12 the same were set forth in this Decree in full.
13
14

15 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
16 AND DECREED that the parties shall abide by Judge Moss' Mutual
17 Behavior Order, a copy of which is attached hereto as **Exhibit "C,"** the
18 terms of which are ratified, confirmed, and approved by the Court at this
19 time, and the same is incorporated into this Decree of Divorce as though
20 the same were set forth in this Decree in full.
21
22

23 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
24 AND DECREED that the family dog, Abby, shall travel with the children
25 between homes, once SARAH JANEEN ROSE has her own residence. If
26
27

28 . . .

1 either party no longer wants the dog, there shall be a "free" right of first
2 refusal to the other party.
3

4 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
5 AND DECREED that the Court retains jurisdiction of the parties and the
6 subject matter hereof for the purpose of making such other and further
7 orders as relates to the care and custody of the minor children of the
8 parties as to the Court may seem meet and proper from time to time
9 hereafter during the minority of said children.
10

11 NOTICE IS HEREBY GIVEN that the following statutory notices
12 relating to custody are applicable to DAVID JOHN ROSE and SARAH
13 JANEEN ROSE:
14

15 1) Pursuant to EDCR 5.301, the parties, and each of them, are
16 hereby placed on notice of the following:
17

18 All lawyers and litigants possessing knowledge of
19 matters being heard by the family division are prohibited
20 from:
21

22 (a) Discussing the issues, proceedings, pleadings, or
23 papers on file with the court with any minor child;

24 (b) Allowing any minor child to review any such
25 proceedings, pleadings, or papers or the record of the
26 proceedings before the court, whether in the form of
27 transcripts, audio, or video recordings, or otherwise;

28 (c) Leaving such materials in a place where it is likely or
foreseeable that any child will access those materials; or

(d) Knowingly permitting any other person to do any of the
things enumerated in this rule, without written consent of the
parties or the permission of the court.

1
2
3 B. Pursuant to NRS 125C.006, the parties, and each of them, are
4 hereby placed on notice of the following:

5 1. If primary physical custody has been established pursuant
6 to an order, judgment or decree of a court and the custodial
7 parent intends to relocate his or her residence to a place
8 outside of this State or to a place within this State that is at
9 such a distance that would substantially impair the ability of
10 the other parent to maintain a meaningful relationship with
11 the child, and the custodial parent desires to take the child
12 with him or her, the custodial parent shall, before relocating:

13 (a) Attempt to obtain the written consent of the noncustodial
14 parent to relocate with the child; and

15 (b) If the noncustodial parent refuses to give that consent,
16 petition the court for permission to relocate with the child.

17 2. The court may award reasonable attorney's fees and costs to
18 the custodial parent if the court finds that the noncustodial
19 parent refused to consent to the custodial parent's relocation
20 with the child:

21 (a) Without having reasonable grounds for such refusal; or

22 (b) For the purpose of harassing the custodial parent.

23 3. A parent who relocates with a child pursuant to this section
24 without the written consent of the noncustodial parent or the
25 permission of the court is subject to the provisions of NRS
26 200.359.

27 C. Pursuant to NRS 125C.0065, the parties, and each of them, are
28 hereby placed on notice of the following:

1. If joint physical custody has been established pursuant to an
order, judgment or decree of a court and one parent intends to
relocate his or her residence to a place outside of this State or

1 to a place within this State that is at such a distance that
2 would substantially impair the ability of the other parent to
3 maintain a meaningful relationship with the child, and the
4 relocating parent desires to take the child with him or her, the
relocating parent shall, before relocating:

5 (a) Attempt to obtain the written consent of the
6 non-relocating parent to relocate with the child; and

7 (b) If the non-relocating parent refuses to give that consent,
8 petition the court for primary physical custody for the purpose
of relocating.

9 2. The court may award reasonable attorney's fees and costs to
10 the relocating parent if the court finds that the non-relocating
11 parent refused to consent to the relocating parent's relocation
with the child:

12 (a) Without having reasonable grounds for such refusal; or

13 (b) For the purpose of harassing the relocating parent.

14 3. A parent who relocates with a child pursuant to this section
15 before the court enters an order granting the parent primary
16 physical custody of the child and permission to relocate with
the child is subject to the provisions of NRS 200.359.

17 D. Pursuant to chapters 125A of NRS and NRS 125C.0601 to
18 125C.0693, the parties, and each of them, are hereby placed on notice of
19 the following:
20

21 PENALTY FOR VIOLATION OF ORDER: THE
22 ABDUCTION, CONCEALMENT OR DETENTION OF A
23 CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE
24 AS A CATEGORY D FELONY AS PROVIDED IN NRS
25 193.130. NRS 200.359 provides that every person having a
26 limited right of custody to a child or any parent having no
27 right of custody to the child who willfully detains, conceals, or
28 removes the child from a parent, guardian or other person
having lawful custody or a right of visitation of the child in
violation of an order of this court, or removes the child from

1 the jurisdiction of the court without the consent of either the
2 court or all persons who have the right to custody or visitation
3 is subject to being punished for a category D felony as provided
4 in NRS 193.130.

5 E. Pursuant to provisions of NRS 125C.0045(7), the parties, and
6 each of them, are hereby placed on notice that the terms of the Hague
7 Convention of October 25, 1980, adopted by the 14th Session of the Hague
8 Conference on Private International Law apply if a parent abducts or
9 wrongfully retains a child in a foreign country as follows:
10
11

12 Section 8: If a parent of the child lives in a foreign country or
13 has significant commitments in a foreign country:

14 (a) The parties may agree, and the court shall include in the
15 order for custody of the child, that the United States is the
16 country of habitual residence of the child for the purposes of
17 applying the terms of the Hague Convention as set forth in
18 Subsection 7.

19 (b) Upon motion of the parties, the court may order the parent
20 to post a bond if the court determines that the parent poses an
21 imminent risk of wrongfully removing or concealing the child
22 outside the country of habitual residence. The bond must be in
23 an amount determined by the court and may be used only to
24 pay for the cost of locating the child and returning him to his
25 habitual residence if the child is wrongfully removed from or
26 concealed outside the country of habitual residence. The fact
27 that a parent has significant commitments in a foreign country
28 does not create a presumption that the parent poses an
imminent risk of wrongfully removing or concealing the child.

F. The parents understand and acknowledge that, pursuant to the

1 terms of the Parental Kidnaping Prevention Act, 28 U.S.C. §1738A, and
2 the Uniform Child Custody Jurisdiction and Enforcement Act, NRS
3 125A.005, et seq., the courts of Nevada have exclusive modification
4 jurisdiction of the custody, visitation, and child support terms relating to
5 the child at issue in this case so long as either of the parents, or the child,
6 continue to reside in Nevada.
7

8
9 G. The parents acknowledge that the United States is the country
10 and Nevada is the State of habitual residence of the minor child(ren)
11 herein.
12

13
14 **B. Child Support:**

15 The Court FINDS that DAVID JOHN ROSE's gross monthly income
16 is \$8,671. Twenty-nine percent (29%) of DAVID JOHN ROSE's gross
17 monthly income is \$2,514.59. DAVID JOHN ROSE's gross monthly income
18 falls into the fourth tier of the Presumptive Maximum Amounts of Child
19 Support (NRS 125B.070) effective July 1, 2017, through June 30, 2018,
20 and the presumptive maximum amount DAVID JOHN ROSE may be
21 required to pay per month per child is \$905 (or \$2,715 for three (3)
22 children).
23
24
25

26 The Court FINDS that SARAH JANEEN ROSE's imputed gross
27 monthly income is \$2,166. Twenty-nine percent (29%) of SARAH
28

1 JANEEN ROSE's gross monthly income is \$628.14. SARAH JANEEN
2 ROSE's gross monthly income falls into the first tier of the Presumptive
3 Maximum Amounts of Child Support (NRS 125B.070) effective July 1,
4 2017, through June 30, 2018, and the presumptive maximum amount
5 SARAH JANEEN ROSE may be required to pay per month per child is
6 \$696 (or \$2,088 for three (3) children).
7

8
9 Twenty-nine percent of DAVID JOHN ROSE's gross monthly income
10 (\$2,514) minus twenty-nine percent of SARAH JANEEN ROSE's gross
11 monthly income (\$628) is \$1,886.
12

13
14 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED
15 and DECREED that DAVID JOHN ROSE shall pay child support to
16 SARAH JANEEN ROSE at the rate of \$1,886 per month, commencing
17 April 1, 2017, pursuant to NRS 125B.070, NRS 125B.080, Wright v.
18 Osborn, 114 Nev. 1367 (1998), and Wesley v. Foster, 119 Nev. 110 (2003),
19
20 DAVID JOHN ROSE's child support payment will be due on the first day
21 of each month. These provisions shall continue until such time as the
22 children attain the age of eighteen (18) years, unless the children are still
23 attending high school, and in such event until said children graduate from
24 high school or attain the age of nineteen (19), or until such children are
25 otherwise emancipated pursuant to the Nevada Revised Statutes,
26
27
28

1 whichever occurs first.

2 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
3
4 AND DECREED that DAVID JOHN ROSE shall pay SARAH JANEEN
5 ROSE the sum of \$13,000 (Thirteen Thousand Dollars) as and for
6 constructive child support arrears. Said constructive child support arrears
7 shall be payable in monthly payments of \$270.00 for a period of 48 months
8 commencing April 1, 2018.
9
10

11 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
12 and DECREED that DAVID JOHN ROSE shall continue to provide
13 medical support for the child, if available as a benefit of employment and
14 is reasonable in cost and accessible. Medical support includes, without
15 limitation, coverage for health care under a plan of insurance that is
16 reasonable in cost and accessible, including, without limitation, the
17 payment of any premium, co-payment or deductible and the payment of
18 medical expenses.
19
20
21

22 Payments of cash for medical support or the costs of coverage for
23 health care under a plan of insurance are "reasonable in cost" if: (1) In the
24 case of payments of cash for medical support, the cost to each parent who
25 is responsible for providing medical support is not more than 5 percent of
26 the gross monthly income of the parent; or (2) In the case of the costs of
27
28

1 coverage for health care under a plan of insurance, the cost of adding a
2 dependent child to any existing coverage for health care or the difference
3 between individual and family coverage, whichever is less, is not more
4 than 5 percent of the gross monthly income of the parent.
5

6
7 Coverage for health care under a plan of insurance is "accessible" if
8 the plan: (1) Is not limited to coverage within a geographical area; or (2)
9 Is limited to coverage within a geographical area and the child resides
10 within that geographical area.
11

12 These provisions shall continue until such time as the child attains
13 the age of eighteen (18) years, unless the child is still attending high
14 school, and in such event until said child graduates from high school or
15 attains the age of nineteen (19), or until such child is otherwise
16 emancipated pursuant to the Nevada Revised Statutes, whichever occurs
17 first.
18
19

20
21 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED
22 and DECREED that, pursuant to NRS 125B.080(7), the parties shall
23 equally bear all of the children's unreimbursed medical expenses,
24 including psychiatric, orthodontic, dental and optical costs, which are not
25 covered by said insurance. The parties will abide by the "30/30" rule for
26 unreimbursed medical expenses as follows:
27
28

- 1 a. Documentation of Out-of-Pocket Expenses
2 Required: A party who incurs an out-of-pocket
3 expense for medical care is required to document
4 that expense and proof of payment of that expense.
5 A receipt from the health care provider is sufficient
6 to prove the expense so long as it has the name of
7 the child on it and shows an actual payment by the
8 party.
- 9 b. Proof of Payment Required: A party who has paid
10 a health expense for the minor child of the parties
11 must provide a copy of the proof of payment to the
12 other party and the insurance company within
13 thirty (30) days of the payment being made and in
14 no event later than the expense could have been
15 submitted to insurance for reimbursement. The
16 failure of a party to comply with this provision in a
17 timely manner which causes the claim for
18 insurance reimbursement to be denied by the
19 insurance company as untimely will result in that
20 party being required to pay the entire amount
21 which would have been paid by the insurance
22 company as well as one-half ($\frac{1}{2}$) of the expense
23 which would not have been paid by insurance if the
24 claim had been timely filed.
- 25 c. Mitigation of Health Expenses Required; Use of
26 Covered Insurance Providers: Each party has a
27 duty to mitigate medical expenses for the minor
28 child. Absent compelling circumstances, a party
should take the minor child to a health care
provider covered by the insurance in effect and use
preferred providers if available in order to
minimize the cost of health care as much as
possible. The burden is on the party using a non-
covered health care provider to demonstrate that
the choice not to use a covered provider or the
lowest cost option was reasonably necessary in the
particular circumstances of that case. If the court

1 finds the choice of a non-covered or more expensive
2 covered provider was not reasonably necessary,
3 then the court may impose a greater portion of
4 financial responsibility for the cost of that health
5 care to the party who incurred that expense up to
6 the full amount which would have been provided by
the lowest cost insurance choice.

7 d. Sharing of Insurance Information Required: The
8 party providing insurance coverage for the child
9 has a continuing obligation to provide insurance
10 information including, but not limited to, copies of
11 policies and changes thereto as they are received,
12 claim forms, preferred provider lists (as modified
13 from time to time), and identification card. The
14 failure of the insuring party to timely supply any of
15 the above items to the other party which results in
16 the claim for treatment being denied by the
insurance company in whole or in part will result
17 in the amount which would have been paid by the
18 insurance policy being paid by the insuring party.

19 e. Reimbursement For Out-of-Pocket Expenses: A
20 party who receives a written request for
21 contribution for an out-of-pocket health care
22 expense incurred by the other party must pay his
23 or her share of the out-of-pocket expense to the
24 paying party within thirty (30) days of receipt of
25 the written request for contribution. The court
26 encourages as much informal written
27 documentation as possible such as a handwritten
28 note with copies of the bills and proof of payment
attached. The requesting party shall make a copy
of all papers submitted to the other party and
substantiation for the request. The party receiving
the request for contribution must raise questions
about the correctness of the request for
contribution within the thirty (30) day period after
the request for contribution is received. Any

1 objection to the request for contribution must be
2 made in writing with a copy made for later
3 reference by the court. The parties have stipulated
4 that if the party receiving a request for
5 contribution does not respond to the request within
6 the thirty (30) day period, that party may be
7 assessed attorney's fees if a contempt proceeding or
8 court action is required as a result of the party's
9 failure to pay or timely objection. If the party who
10 owes contribution for a health care expense of the
11 minor child of the parties does not pay the amount
12 due within the thirty (30) day period and fails to
13 respond to the request within the thirty (30) days
14 and if that party is the recipient of periodic
15 payments for child support (if such an obligation
16 arises in the future), the requesting party is
17 authorized to deduct the amount due from the
18 other party from any periodic payments due and
19 payable thirty (30) days after the request for
20 contribution was made in writing subject to the
21 limitation that the maximum recovery by deduction
22 from monthly periodic payments will be no more
23 than two hundred dollars (\$200.00) per month.

18 f Sharing Insurance Reimbursement: If either
19 party receives a payment from an insurance
20 company or medical provider which reimburses
21 payments made out-of-pocket previously by both
22 parties or the other party only, the party receiving
23 the payment must give the other party's share of
24 the payment to the other party within seven (7)
25 days of receipt of the payment.

24 g. Timely Submission of Claims to Insurance
25 Company: If either party is permitted under the
26 insurance contract to submit a claim for payment
27 to the insurance company directly, that party must
28 do so in a timely manner. If the claim must be
submitted only by one party, that party must

1 submit the claim in a timely manner. Failure of a
2 party to comply with this timely submission
3 requirement will result in that party being
4 required to pay the entire amount of the claim
5 which would have been paid by insurance if timely
6 submitted and one-half of that amount which
7 would have been paid by insurance.

- 8 h. Effect of Not Obtaining or Maintaining Required
9 Health Insurance Coverage: If a party is required
10 to provide health insurance for a child of the
11 parties and fails to do so when such insurance is
12 available, that party shall be responsible for that
13 portion of any medical expense that would have
14 been paid by a reasonably priced insurance policy
15 available at the time. Should both parties, who are
16 obligated to provide health insurance for the minor
17 child, lose that ability, the parties shall jointly
18 choose and pay for an alternative policy. The court
19 shall reserve jurisdiction to resolve any dispute
20 relating to alternative insurance.

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
22 parties shall alternate the dependent child tax deduction such that
23 DAVID JOHN ROSE will claim the dependent child tax deduction for the
24 child DAVID JAMES ROSE on his income taxes beginning with 2018, and
25 every year thereafter, and SARAH JANEEN ROSE will claim the
26 dependent child tax deduction for the child CARSON DAVID ROSE on
27 her income taxes beginning with 2018, and every year thereafter. The
28 parties shall alternate the dependent child tax deduction for the child

1 LILY PAIGE ROSE, such that DAVID JOHN ROSE will claim LILY
2 PAIGE ROSE in odd years and SARAH JANEEN ROSE will claim LILY
3 PAIGE ROSE in even years.
4

5 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
6 AND DECREED that the Court shall retain jurisdiction of the parties and
7 the subject matter hereof for the purpose of making such other and
8 further orders as relates to the support and maintenance of the minor
9 children of the parties as to the Court may seem meet and proper from
10 time to time hereafter during the minority of said children.
11
12

13 NOTICE IS HEREBY GIVEN that the following statutory notices
14 relating to child support are applicable to DAVID JOHN ROSE and
15 SARAH JANEEN ROSE:
16
17

18 1) Pursuant to **NRS 125B.095**, if an installment of an
19 obligation to pay support for a child becomes delinquent in the amount
20 owed for 1 month's support, a 10% per annum penalty must be added to
21 the delinquent amount.
22

23 2) Pursuant to **NRS 125B.140**, if an installment of an
24 obligation to pay support for a child becomes delinquent, the court shall
25 determine interest upon the arrearages at a rate established pursuant to
26 **NRS 99.040**, from the time each amount became due. Interest shall
27
28

1 continue to accrue on the amount ordered until it is paid, and additional
2 attorney's fees must be allowed if required for collection.
3

4 3) Pursuant to **NRS 125B.145**, an award of child support
5 shall be reviewed by the court at least every three (3) years to determine
6 whether the award should be modified. The review will be conducted upon
7 the filing of a request by a (1) parent or legal guardian of the child; or (2)
8 the Nevada State Welfare Division or the District Attorney's Office, if the
9 the Nevada State Welfare Division or the District Attorney's Office, if the
10 Division of the District Attorney has jurisdiction over the case.
11

12 1. An order for the support of a child must, upon the filing of
13 a request for review by:

14 (a) The welfare division of the department of
15 human resources, its designated representative or
16 the district attorney, if the welfare division or the
17 district attorney has jurisdiction in the case; or

18 (b) A parent or legal guardian of the child,
19 be reviewed by the court at least every 3 years
20 pursuant to this section to determine whether the
21 order should be modified or adjusted. Each review
22 conducted pursuant to this section must be in
23 response to a separate request.

24 . . .
25 4. An order for the support of a child may be reviewed at any
26 time upon the basis of changed circumstances.
27

28 4) Pursuant to **NRS 125.450(2)**, the wages and commissions
of the parent responsible for paying support shall be subject to assignment
or withholding for the purpose of payment of the foregoing obligation of
support as provided in **NRS 31A.020** through **31A.240**, inclusive.

1 5) Pursuant to **NRS 125B.055(3)**, each party must, within
2
3 ten (10) days after the entry of this Order, file with the Eighth Judicial
4 District Court, Family Division, 601 North Pecos Road, Las Vegas,
5 Nevada 89101, and with the State of Nevada, Department of Human
6 Resources, Welfare Division, a Child Support and Welfare Party
7 Identification Sheet setting forth:
8

9
10 (a) The names, dates of birth, social security numbers
and driver's license numbers of the parents of the child;

11 (b) The name and social security number of the child;

12 (c) The case identification number assigned by the court; and

13 (d) Such other information as the welfare department
14 determines is necessary to carry out the provisions of 42
U.S.C. Section 654a.

15 **C. Community Property:**
16

17 **1. Awarded to Plaintiff, DAVID JOHN ROSE:**

18 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
19 AND DECREED that DAVID JOHN ROSE is hereby awarded as her sole
20 and separate property, free of any claims of SARAH JANEEN ROSE, sole
21 ownership of the following:
22

23 a) The sum of \$5,000 (Five Thousand Dollars) from the
24 approximate \$55,585.95 (Fifty-five Thousand Five Hundred
25 Eighty-Five Dollars and Ninety-Five Cents) from the proceeds
26 from the sale of the Marital Residence located at 7705 Young
27
28

1 Harbor Drive, Las Vegas, Nevada, within five (5) days of
2
3 executing the Decree of Divorce. The parties acknowledge that
4 the proceeds from the sale of the Marital Residence are
5 currently being held in the trust account of Regina M.
6 McConnell.
7

8 b) One-half of the community portion, as defined within
9 Nevada law as articulated in Gemma v. Gemma, 105 Nev. 458
10 (1989), and Fondi v. Fondi, 106 Nev. 856 (1990), in DAVID
11 JOHN ROSE's Las Vegas Metropolitan Police Department
12 Public Employees' Retirement System of Nevada Pension
13 benefits, said pension benefits to be divided pursuant to a
14 Qualified Domestic Relations Order ("QDRO"), based upon a
15 selection of Option 2 being made at the time of retirement so
16 as to name SARAH JANEEN ROSE as the irrevocable
17 survivor beneficiary of DAVID JOHN ROSE' pension benefits
18 upon death, to divide said retirement account. The parties
19 shall engage the services of Shann D. Winesett, of Las Vegas
20 QDRO, located at 8925 South Pecos Road, Suite 14C,
21 Henderson, Nevada 89074, Telephone: (702) 263-8438, E-Mail:
22 customerservice@lasvegasqdro.com, for the preparation of the
23
24
25
26
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28

1 QDRO immediately after both parties and their respective
2 counsel duly execute the Stipulated Decree of Divorce. SARAH
3 JANEEN ROSE and DAVID JOHN ROSE shall equally bear
4 the cost associated with preparing said QDRO (approximately
5 \$800.00). Both parties are authorized to communicate with the
6 preparer of the QDRO with regard to preparation of the
7 QDRO. Both parties understand that The Cooley Law Firm
8 and McConnell Law Group, Ltd. are not responsible for the
9 preparation of the QDRO.
10

11 c) All right, title and interest in the furniture and
12 furnishings in his possession.
13

14 d) All right, title and interest in the 2015 Dodge Challenger
15 automobile in her possession, if any, subject to any
16 encumbrances thereon. Both parties names are associated with
17 the loan on said automobile. As such, DAVID JOHN ROSE
18 shall have six (6) months to refinance said loan, removing
19 SARAH JANEEN ROSE's name from said loan obligation.
20

21 e) Any and all bank or financial institution accounts in his
22 name alone.
23

24 g) All personal property and jewelry in his possession.
25
26
27
28

1 h) All of his personalities.

2 2. Awarded to Defendant, SARAH JANEEN ROSE:

3 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
4 AND DECREED that SARAH JANEEN ROSE is hereby awarded as her
5 sole and separate property, free of any claims of DAVID JOHN ROSE, sole
6 ownership of the following:
7

8 a) The sum of \$27,792.98 (Twenty-seven Thousand Seven
9 Hundred Ninety-Two Dollars and Ninety-Eight Cents) from
10 the approximate \$55,585.95 (Fifty-five Thousand Five
11 Hundred Eighty-Five Dollars and Ninety-Five Cents) from the
12 proceeds from the sale of the Marital Residence located at 7705
13 Young Harbor Drive, Las Vegas, Nevada, to be paid within
14 five (5) days of executing the Decree of Divorce. The parties
15 acknowledge that the proceeds from the sale of the Marital
16 Residence are currently being held in the trust account of
17 Regina M. McConnell.
18

19 b) One-half of the community portion, as defined within
20 Nevada law as articulated in Gemma v. Gemma, 105 Nev. 458
21 (1989), and Fondi v. Fondi, 106 Nev. 856 (1990), in DAVID
22 JOHN ROSE's Las Vegas Metropolitan Police Department
23
24
25
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27
28

1 Public Employees' Retirement System of Nevada Pension
2 benefits, said pension benefits to be divided pursuant to a
3 Qualified Domestic Relations Order ("QDRO"), based upon a
4 selection of Option 2 being made at the time of retirement so
5 as to name SARAH JANEEN ROSE as the irrevocable
6 survivor beneficiary of DAVID JOHN ROSE' pension benefits
7 upon death, to divide said retirement account. The parties
8 shall engage the services of Shann D. Winesett, of Las Vegas
9 QDRO, located at 8925 South Pecos Road, Suite 14C,
10 Henderson, Nevada 89074, Telephone: (702) 263-8438, E-Mail:
11 customerservice@lasvegasqdro.com, for the preparation of the
12 QDRO immediately after both parties and their respective
13 counsel duly execute the Stipulated Decree of Divorce. SARAH
14 JANEEN ROSE and DAVID JOHN ROSE shall equally bear
15 the cost associated with preparing said QDRO (approximately
16 \$800.00). Both parties are authorized to communicate with the
17 preparer of the QDRO with regard to preparation of the
18 QDRO. Both parties understand that The Cooley Law Firm
19 and McConnell Law Group, Ltd. are not responsible for the
20 preparation of the QDRO.
21
22
23
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1 c) All right, title and interest in the 2012 Scion XB
2 automobile, subject to the encumbrance thereon.

4 d) All right, title and interest in the furniture and
5 furnishings in her possession.

7 e) Any and all bank or financial institution accounts in her
8 name alone.

10 f) All personal property and jewelry in her possession.

11 gh) All of her personalties.

12 **D. Community Debt:**

14 **1. To be Paid by Plaintiff, DAVID JOHN ROSE:**

15 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
16 AND DECREED that DAVID JOHN ROSE shall assume and pay the
17 following debts, and he shall further indemnify and hold SARAH JANEEN
18 ROSE harmless therefrom:
19

21 a) Any and all debts associated with the assets awarded to
22 him herein.

23 b) Any and all debts in his name alone.

24 c) Any and all credit cards in his name alone.

25 d) Any and all debts incurred solely by DAVID JOHN ROSE
26 as of the parties separation, which occurred on 02/21/2017.
27
28

1 **2. To be Paid by Defendant, SARAH JANEEN ROSE:**

2 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
3
4 AND DECREED that SARAH JANEEN ROSE shall assume and pay the
5 following debts, and she shall further indemnify and hold DAVID JOHN
6 ROSE harmless therefrom:
7

8 a) Any and all debts associated with the assets awarded to
9 her.

10 b) Any and all debts in her name alone.

11 c) Any and all credit cards in her name alone.

12 d) Any and all debts incurred solely by SARAH JANEEN
13
14 ROSE as of the parties separation, which occurred on
15
16 02/21/2017.
17

18 **E. Alimony:**

19 The Court FINDS that DAVID JOHN ROSE is age 32, and is
20
21 employed on a full-time basis with Las Vegas Metropolitan Police
22 Department as a Sergeant. SARAH JANEEN ROSE is age 29, and is
23 employed on a full-time basis with Academica-Doral Academy Pebble
24 Campus.
25

26 The Court FURTHER FINDS that DAVID JOHN ROSE and SARAH
27 JANEEN ROSE have been married for 11 years 9 months.
28

1 Accordingly, IT IS STIPULATED and THEREFORE ORDERED,
2
3 ADJUDGED AND DECREED that David shall pay SARAH JANEEN
4 ROSE the sum of \$22,792.97 (Twenty-two Thousand Seven Hundred
5 Ninety-Two Dollars and Ninety-Seven Cents) as and for lump sum, non-
6 modifiable alimony, to be paid within five (5) days of executing the Decree
7 of Divorce. The parties acknowledge that DAVID JOHN ROSE shall be
8
9 utilizing his share of the proceeds from the Marital Residence, currently
10
11 held in trust with Regina M. McConnell, to satisfy the alimony obligation.

12 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
13
14 AND DECREED that said lump sum alimony payment received by
15 SARAH JANEEN ROSE shall be included as income to SARAH JANEEN
16 ROSE and deductible to DAVID JOHN ROSE on the parties' respective
17
18 federal income tax returns.

19 **F. Attorneys' Fees:**

20
21 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED
22 and DECREED that each party shall bear their own attorneys' fees and
23 costs incurred relative to this matter.

24
25 **G. Change of Name of Defendant, SARAH JANEEN ROSE:**

26 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
27 AND DECREED that SARAH JANEEN ROSE shall be permitted to either
28

1 restore her maiden name: SARAH JANEEN WOODALL, and/or retain her
2 married name: SARAH JANEEN ROSE.

3
4 **H. Tax Provisions:**

5 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
6
7 AND DECREED that SARAH JANEEN ROSE and DAVID JOHN ROSE
8 shall file separate tax returns beginning with the calendar year of 2018.
9
10 Each party will report their own individual employment earnings, income,
11 gains and/or deductions arising from the assets and debts awarded to
12 them herein, and the parties agree to indemnify and hold harmless the
13 other from any tax penalties or interest related to their individual tax
14 obligation. Should there be any corrections to any previous tax returns,
15 then each respective party shall be solely responsible for any portion of
16 any liability resulting from that party's respective income.
17

18
19 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
20
21 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
22 hereby elect to have the division of their marital estate treated as a
23 non-taxable transfer between spouses.
24

25 NOTICE IS FURTHER GIVEN that under Circular 230 Disclosure:
26 To ensure compliance with United States Treasury Department
27 Regulations, the parties are advised that, unless otherwise expressly
28

1 indicated, any federal tax advice that may be in this Decree of Divorce, or
2 which otherwise may pertain to this Decree of Divorce and/or any issue
3 that may be incident to the parties' divorce or their marriage to each
4 other, including any documents attached to this Decree of Divorce, is not
5 intended or written to be used, and cannot be used, by anyone for the
6 purpose of avoiding penalties under the Internal Revenue Code or
7 promoting, marketing or recommending to another party any tax-related
8 matters that may be addressed in this Decree of Divorce or otherwise.
9

12 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
13 AND DECREED that the parties further admit and agree that each of
14 them has had the opportunity to discuss with independent tax counselors,
15 other than the attorney of record in the divorce action filed pertaining to
16 the parties, concerning the income tax and estate tax implications and
17 consequences with respect to the agreed upon division of properties and
18 indebtedness, and SHELLY BOOTH COOLEY, and THE COOLEY LAW
19 FIRM and REGINA M. MCCONNELL and MCCONNELL LAW, LTD.,
20 were not expected to provide and, in fact, did not provide tax advice
21 concerning this Decree of Divorce.
22
23
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1 **I. PROPERTY ACQUIRED IN FUTURE TO BE SEPARATE**
2 **PROPERTY**

3 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
4 AND DECREED that except as otherwise specified herein, any and all
5 property acquired, income received or liabilities incurred by either of the
6 parties hereto, shall be the sole and separate property of the one so
7 acquiring the same, or the sole liability of the one so incurring the same.
8 Each of the parties hereto respectively grants to the other all such future
9 acquisitions of property as the sole and separate property of the one so
10 acquiring the same and holds harmless and agrees to indemnify the other
11 party from any and all liabilities incurred.
12 party from any and all liabilities incurred.

13 **J. RIGHT TO DISPOSE OF PROPERTY BY WILL**

14 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
15 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
16 shall each have an immediate right to dispose of or bequeath by will his
17 or her respective interests in and to any and all property belonging to him
18 or her from and after the date hereof, and that such right shall extend to
19 all of the aforesaid future acquisitions of property as well as to all
20 property set over to either of the parties hereto under this Decree of
21 Divorce.
22 Divorce.
23 Divorce.
24 Divorce.
25 Divorce.
26 Divorce.
27 Divorce.
28 Divorce.

1 **K. WAIVER OF INHERITANCE RIGHTS**

2 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
3
4 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE,
5
6 except as hereinafter provided, each hereby waive any and all right to the
7
8 estate of the other left at his or her death and forever quitclaim any and
9
10 all right to share in the estate of the other by the laws of succession, and
11
12 said parties hereby release one to the other all rights to inherit from the
13
14 other. Furthermore, said parties hereby renounce, one to the other, all
15
16 right to be administrator or administratrix, executor or executrix, of the
17
18 estate of the other, and said parties hereby waive any and all right to the
19
20 estate or any interest in the estate of the other by way of inheritance, or
21
22 otherwise, for family allowance therein or therefrom, to a probate or other
23
24 homestead upon any property of the other, and to have set aside to him or
25
26 her any property of the other exempt from execution, and from the date
27
28 of this Decree of Divorce to the end of the world, said waiver by each in
the estate of the other party shall be effective, and said parties shall have
all the rights of single persons and maintain the relationship of such
toward each other.

...

...

1 **L. MUTUAL RELEASE OF OBLIGATIONS AND LIABILITIES**

2 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
3
4 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
5 understand and agree that this Decree of Divorce is deemed to be a final
6 and conclusive and integrated agreement between the parties, and that
7 except as herein specified, each party hereto is hereby released and
8 absolved from any and all liabilities and obligations for the future acts and
9 duties of the other, and that each of said parties hereby releases the other
10 from any and all liabilities, future accounts, alimony and support or
11 otherwise, or debts or obligations of any kind or character incurred by the
12 other except as hereinbefore provided, it being understood that this
13 instrument is intended to settle finally and conclusively the rights of the
14 parties hereto in all respects arising out of their marital relationship
15 except as hereinbefore provided.
16
17
18
19
20

21 **M. EXECUTION OF NECESSARY DOCUMENTS**

22 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
23
24 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
25 shall execute any and all legal documents, certificates of title, bills of sale,
26 stock transfers, deeds or other instruments or documents necessary in
27 order to effectuate transfer of any and all interest either may have in and
28

1 to the said property hereby conveyed and/or transferred to the other as
2 herein above specified in this Decree of Divorce within ten (10) days of
3 presentation of same for such signature. Should either party fail to
4 execute any of said documents to transfer interest to other, then it is
5 agreed that this Decree of Divorce shall constitute a full and complete
6 transfer of the interest of one to the other, as herein above provided, it is
7 further agreed that pursuant to NRCP 70, the Clerk of the Court, shall
8 be deemed to have hereby been appointed and empowered to sign, on
9 behalf of the non-signing party, any of the said documents of transfer
10 which have not been executed by the party otherwise responsible for such,
11 and it is further agreed that this Agreement shall constitute and operate
12 as such properly executed document and the County Assessor and County
13 Recorder and any and all other public and private officials are hereby
14 authorized and directed to accept this Decree of Divorce, or a properly
15 certified copy thereof, in lieu of the document regularly required for such
16 conveyance or transfer.

23
24 **N. ACCEPTANCE OF DECREE AND ADVICE OF COUNSEL**

25 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED
26 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
27 agree that they each have had a reasonable opportunity to seek the advice
28

1 of independent counsel and to obtain adequate and sufficient knowledge
2 of the extent and approximate present value of the community property
3 and separate property of the other, and to the extent of having declined
4 to examine and/or investigate further, have thereby waived and do hereby
5 waive and relinquish the right to do so.
6

7
8 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED
9
10 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
11 further acknowledge that each party has become sufficiently acquainted
12 with the other's earnings, property and financial obligations listed herein,
13 and, to the extent requested, have had a reasonable opportunity to obtain
14 knowledge of the property and financial obligations of the community
15 and/or of the other party, and to the extent that they have not availed
16 themselves of the opportunity to obtain such knowledge, each party
17 expressly waives the right to further disclosure thereof; that they each
18 have ascertained and weighed all of the facts, conditions and
19 circumstances likely to influence their judgement herein; that all matter
20 embodied herein, as well as all questions pertinent hereto have been
21 satisfactorily explained; they that have individually given due
22 consideration to such matters and questions; that, individually, each party
23 clearly understands and consents to all of the provisions herein; that each
24
25
26
27
28

1 party freely, voluntarily, without duress, and with full knowledge of the
2 consequences thereof, have waived their rights as described herein; and
3 that each party voluntarily and expressly waives any right to further
4 disclosure of the property, earnings and financial obligation of the
5 community or the other party beyond the disclosures already provided and
6 contained herein.
7
8

9
10 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
11 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
12 further acknowledge that the parties' counsel have undertaken neither
13 discovery nor investigation to determine or confirm the nature, extent, or
14 valuation of the assets and obligations of the community and/or of each
15 party. DAVID JOHN ROSE and SARAH JANEEN ROSE agree to
16 indemnify and hold Counsel harmless from liability relating to the
17 valuation of community and/or separate property, debts and/or the herein
18 division of property and debts. DAVID JOHN ROSE and SARAH
19 JANEEN ROSE also acknowledge and agree that each of them has
20 independently obtained sufficient information necessary for them to
21 individually determine, to their satisfaction, the nature, extent, and/or
22 valuation of the subject property and debts. SARAH JANEEN ROSE
23 further acknowledges and agrees that he has not relied on any
24
25
26
27
28

1 representation by Counsel as to the nature, extent, and/or valuation of the
2 subject property and debts and/or with respect to the division of the
3 property and debts herein.
4

5 **O. OMITTED PROPERTY:**
6

7 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
8 AND DECREED that in the event any community property has been
9 omitted from this Decree of Divorce that would have been community
10 property or otherwise jointly-held property under the law applicable as of
11 the date hereof, the concealing or possessory party will transfer or convey
12 to the other party, at the other party's election: (a) the full market value
13 of the other party's interest on the date of this Decree of Divorce, plus
14 statutory interest through and including the date of transfer or
15 conveyance; (b) the full market value of the other party's interest at the
16 time that party discovers that he or she has an interest in such property,
17 plus statutory interest through and including the date of transfer or
18 conveyance; or (c) an amount of the omitted property equal to the other
19 party's interest therein, if it is reasonably susceptible to division.
20
21
22
23
24

25 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
26 AND DECREED that if any claim, action or proceeding is brought seeking
27 to hold the one of the parties hereto liable on account of any debt,
28

1 obligation, liability, act or omission assumed by the other party, the
2 responsible party will, at his or her sole expense, defend the innocent
3 party against any such claim or demand, and he or she will indemnify,
4 defend and hold harmless the innocent party.
5

6
7 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
8 AND DECREED that if any joint debt, obligation, liability, act or omission
9 creating such liability has been omitted from this Decree of Divorce and
10 is subsequently discovered, either party may petition the Court for an
11 allocation of that debt, obligation, liability, or liability arising from such
12 act or omission.
13
14

15 **P. KNOWLEDGE AND DISCLOSURE**

16
17 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
18 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
19 each acknowledge that he or she has full knowledge of the assets, financial
20 status and possibilities of inheritance of the other at the time of this
21 Decree of Divorce.
22

23
24 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
25 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
26 each warrant that he or she has made full disclosure of all the assets of
27 the parties hereto. Should it be found that there exist other community
28

1 assets which have not been disclosed and stated in this Decree of Divorce,
2 either party may move the court for a partition of such asset(s) at any
3 time hereafter. With respect to this paragraph, each party hereto
4 specifically waives any and all limitation periods for the bringing of an
5 action to partition such undisclosed asset(s) and further specifically
6 stipulates that the failure to disclose such asset(s) constitutes extrinsic
7 fraud, which will invoke the jurisdiction of the court to partition such
8 undisclosed asset(s) at any future time.

12 **Q. ENTIRE AGREEMENT**

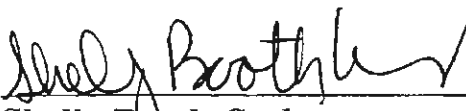
14 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
15 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
16 expressly agree that this Decree of Divorce constitutes a just and equal
17 distribution of the community assets and liabilities as they are known
18 today and amply addresses the contingencies should there exist assets
19 omitted herefrom. DAVID JOHN ROSE and SARAH JANEEN ROSE
20 further expressly agree that this Decree of Divorce contains the entire
21 agreement of the parties on these matters, superseding any previous
22 agreement between them. No other agreement, statement, or promise
23 made on or before the effective date of this Decree of Divorce by or to
24 either party or his or her agent or representative will be binding on the
25
26
27
28

1 parties unless (a) made in writing and signed by both parties, or (b)
2 contained in an order of a Court of competent jurisdiction.
3

4 DATED this _____ day of _____, 2018.


5 
6
7 SARAH JANEEN ROSE

8 THE COOLEY LAW FIRM

9
10 
11 Shelly Booth Cooley
12 Nevada Bar No. 8992
13 10161 Park Run Drive, Suite 150
14 Las Vegas, Nevada 89145
15 Attorneys for Defendant,
16 SARAH JANEEN ROSE


7 DAVID JOHN ROSE

8 MCCONNELL LAW , LTD.

9
10 
11 Regina M. McConnell
12 Nevada Bar No. 4445
13 9017 S. Pecos Road, 4445
14 Henderson, Nevada 89074
15 Attorneys for Plaintiff,
16 DAVID JOHN ROSE

17
18 IT IS SO ORDERED this _____ day of APR 09 2018, 2018.

19
20 
21 DISTRICT COURT JUDGE 
22
23
24
25
26
27
28

Exhibit “A”



1 **THE COOLEY LAW FIRM**
2 Shelly Booth Cooley
3 Nevada State Bar No. 8992
4 10161 Park Run Drive, Suite 150
5 Las Vegas, Nevada 89145
6 Telephone Number: (702) 265-4505
7 Facsimile Number: (702) 645-9924
8 E-mail: scooley@cooleylawlv.com
9 Attorney for Defendant,
10 SARAH ROSE

7 **DISTRICT COURT**
8 **FAMILY DIVISION**
9 **CLARK COUNTY, NEVADA**

9 DAVID ROSE,
10 Plaintiff,

Case No. D-17-547250
Dept No. I

11 vs.

12 SARAH ROSE,
13 Defendant.

14
15
16 **STIPULATED PARENTING AGREEMENT**

17 COME NOW the parents, SARAH ROSE ("MOTHER") and DAVID ROSE
18 ("FATHER") (hereinafter collectively sometimes referred to as the "parents" or the
19 "parties," and individually sometimes referred to as a "parent" or a "party"),
20 personally, and hereby stipulate and agree as follows:

21 The parents have discussed between themselves and have agreed to this
22 Parenting Agreement. The parents further recognize that it may be necessary for the
23 terms and conditions of this Parenting Agreement to be supplemented or revised as
24 the needs of the children and/or the circumstances of the parents change. The
25 parents agree that any such revisions shall be in writing, signed, and dated by both
26 parents. However, the parents understand that such agreed upon revisions and
27 changes do not modify this Court Order. In the event a controversy arises, and until
28 this Order is modified by the Court, this Order of the Court shall remain in full force.

1 and effect, and the parents are encouraged to resolve the controversy themselves or
2 seek mediation prior to initiating further Court proceedings and hearings.

3 It is the intent of the parents, SARAH ROSE, the natural mother, and DAVID
4 ROSE, the natural father, to make every effort to maintain free access and
5 unhampered contact between their minor children, DAVID JAMES ROSE, date of
6 birth: 04/12/2007; CARSON DAVID ROSE, date of birth: 04/12/20017; and LILY
7 PAIGE ROSE, date of birth: 05/24/2011, and the other parent. Neither parent shall
8 do anything which may estrange the children from the other parent or impair the
9 natural development of the children's love and respect for the other parent. Both
10 parents understand that parenting requires the acceptance of mutual responsibilities
11 and rights insofar as the children are concerned. Each parent agrees to communicate
12 and cooperate with the other parent with respect to all matters relating to their
13 children. The parents understand and agree that the best interests of their children
14 will be served by the parents continuing to openly and freely communicate with each
15 other in a civil manner and to cooperate with each other in raising their children.

16 The parents further agree that it is their intent to be and serve as "co-parents"
17 insofar as the raising of their children are concerned. In establishing such a co-
18 parenting arrangement, the parents acknowledge and agree to comply with and abide
19 by the following key principles of co-parenting:

20 1. Both parents will continue to be fully involved in making major
21 decisions about their children's health, education, welfare, and religion.

22 2. The parents will not place their children between them and their
23 conflicts. The children are to be raised jointly by the parents and the parents agree
24 to do so as two business-like partners. As such business partners, when it comes to
25 the children, they agree to be cordial with each other and work out their differences
26 in a fair and equitable manner.

27 ...

28 ...

1 3. Both parents view themselves as having a family. Neither shall be
2 deemed to have a lesser relationship with the children due to any labels this
3 Agreement may establish concerning custody and visitation. Each has a family
4 home and each is entitled to make decisions and have a lifestyle of which the
5 children will be a part when they are in that home. Neither parent shall interfere
6 with the other parent's lifestyle and home life, and to the contrary, each parent
7 agrees to support the other in relation to the children.

8 4. The parents agree that the children shall never be put between the two
9 parents in making a joint decision. Decisions shall be made by the parents together
10 and handed down to the children. The children shall not be permitted to play one
11 parent against the other.

12 5. The parents agree that communication between them regarding their
13 children is essential. The parents will regularly discuss their children's needs,
14 activities and conditions. The parents also will keep each other fully informed about
15 significant events in their children's lives.

16 6. The parents will be jointly responsible for raising their children and
17 will work together to share fairly in their children's expenses (which does not
18 necessarily mean 50-50), living arrangements (which does not necessarily mean 50-
19 50), and care. Both parents will take part in school conferences, doctor's
20 appointments, religious education, etc.

21 7. Both parents acknowledge that they each value and respect the other
22 parent as a co-parent, regardless of their other differences. Each parent also agrees
23 that it is essential for the children to have access to and involvement with both
24 parents.

25 8. Finally, both parents agree that should differences arise between them,
26 every attempt will be made to work such differences out in a fair and equitable
27 manner, before resorting to legal action.

28 ...

1 **I. LEGAL CUSTODY PROVISIONS:**

2 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED AND
3 DECREED that the parents shall have joint legal custody of the minor children,
4 which, in addition to the "co-parenting" principles set forth above, entails the
5 following:

6 The parents shall consult and cooperate with each other in substantial
7 questions relating to educational programs, significant changes in social
8 environment, and health care of the children.

9 The parents shall have access to medical and school records pertaining to the
10 children and be permitted to independently consult with any and all professionals
11 involved with them.

12 All schools, health care providers, day care providers, and counselors shall
13 be selected by the parents jointly. In the event that the parents cannot agree to the
14 selection of a school, the children shall be maintained in the present school pending
15 mediation and/or further Order of the Court.

16 Each parent shall be empowered to obtain emergency health care for the
17 children without the consent of the other parent. Each parent is to notify the other
18 parent as soon as reasonably possible of any illness requiring medical attention, or
19 any emergency involving the children.

20 Each parent shall be responsible for keeping themselves apprised with
21 information of the well-being of the children, including, but not limited to copies of
22 report cards, school meeting notices, vacation schedules, class programs, requests
23 for conferences, results of standardized or diagnostic tests, notices of activities
24 involving the children, samples of school work, order forms for school pictures, all
25 communications from health care providers, the names, addresses and telephone
26 numbers of all schools, health care providers, regular day care providers and
27 counselors.

28 . . .

1 Each parent shall be responsible for keeping themselves apprised of school,
2 athletic, and social events in which the children participate. Neither parent shall
3 prevent the children's participation in extra-curricular activities. Both parents may
4 participate in school activities for the children such as open house, attendance at an
5 athletic event, etc.

6 Each parent is to provide the other parent with the address and telephone
7 number at which the minor children reside, and to notify the other parent within 30
8 days prior to any change of address and provide the telephone number as soon as it
9 is assigned.

10 Each parent is to provide the other parent with a travel itinerary and telephone
11 numbers at which the children can be reached whenever they will be away from the
12 parent's home for a period of 48 hours or more.

13 Each parent shall be entitled to daily, reasonable telephone communication
14 with the children on any day that the parent does not have custody of the children.
15 Said calls shall be initiated by the parent seeking to contact the children. Each
16 parent is restrained from unreasonably interfering with the children's right to
17 privacy during such telephone conversations. Moreover, during each parent's
18 custodial time periods, the minor children may initiate and shall have unhampered
19 contact and access to the other parent and all extended family members, including
20 but not limited to telephone calls, correspondence and notices.

21 The parents will consult with each other before enrolling the minor children
22 in any extracurricular activities. For those activities that would require the minor
23 children to participate in them during the other parent's custodial time, those
24 activities must be agreed to in advance by the parents, before enrolling the children
25 in the extra-curricular activity.

26 ...

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1 **II. PHYSICAL CUSTODY PROVISIONS:**

2 **PHYSICAL CUSTODY:** IT IS STIPULATED and THEREFORE
3 ORDERED, ADJUDGED AND DECREED that the parties shall share Joint
4 Physical Custody of the children. MOTHER shall have custody of the children
5 from Wednesday after school (or at 3:00 p.m. if school is no in session) through
6 Sunday at 11:00 a.m. FATHER shall have custody of the children from Sunday at
7 11:00 a.m. through Wednesday after school (or at 3:00 p.m. if school is not in
8 session). The parents agree to be flexible and to cooperate in good faith with each
9 other with regard to their custodial time with the children.

10 **III. HOLIDAY PROVISIONS:**

11 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED AND
12 DECREED that the parents shall abide by the following holiday visitation schedule,
13 which shall take precedence over, but not break the continuity of, the regular
14 visitation schedule and shall be defined as follows:

HOLIDAY	ODD YEAR	EVEN YEAR
Martin Luther King, Jr.'s Birthday: This holiday shall be defined as the third Monday in January and shall begin at 3:00 p.m. (or recess of school) on the Friday preceding the holiday weekend and continues until 9:00 a.m. (or return to school) on the first weekday following the holiday.	Father	Mother
Presidents' Day: This holiday shall be defined as the third Monday in February and shall begin at 3:00 p.m. (or recess of school) on the Friday preceding the holiday weekend and continues until 9:00 a.m. (or return to school) on the first weekday following the holiday.	Mother	Father
Easter Sunday: This holiday shall be begin the Saturday prior to Easter Sunday at 7:00 p.m. and shall conclude the following Monday at 9:00 a.m.	Father	Mother
Mother's Day: Mother's Day shall be defined as the second Sunday in May and shall begin Sunday at 9:00 a.m. and conclude the morning following Mother's Day at 9:00 a.m. (or return to school).	Mother	Mother
Memorial Day: This holiday shall be defined as the last Monday in May and shall begin at 3:00 p.m.	Mother	Father

1	(or recess of school) on the Friday preceding the		
2	holiday weekend and continues until 9:00 a.m. (or		
3	return to school) on the first weekday following		
4	the holiday.		
5	<u>Father's Day:</u> Father's Day shall be defined as the	Father	Father
6	third Sunday in June and shall begin Sunday at		
7	9:00 a.m. and conclude the morning following		
8	Father's Day at 9:00 a.m. (or return to school).		
9	<u>Independence Day:</u> This holiday shall be defined	Mother	Father
10	as July 4 th and the holiday will include the		
11	weekend if the holiday occurs on a Friday,		
12	Saturday, Sunday or Monday of any given year. In		
13	the event the holiday occurs on a Tuesday,		
14	Wednesday or Thursday, it will be treated as a one		
15	day holiday and shall begin at 9:00 a.m. on July 4 th		
16	and continue until July 5 th at 9:00 a.m.		
17	<u>Labor Day:</u> This holiday shall be defined as the	Father	Mother
18	first Monday in September and shall begin at 3:00		
19	p.m. (or recess of school) on the Friday preceding		
20	the holiday weekend and continues until 9:00 a.m.		
21	(or return to school) on the first weekday		
22	following the holiday.		
23	<u>Nevada Day:</u> This holiday shall be defined as the	Father	Mother
24	last Friday in October and shall begin at 3:00 p.m.		
25	(or recess of school) on the Thursday preceding		
26	the holiday weekend and continues until 9:00 a.m.		
27	(or return to school) on the first weekday		
28	following the holiday.		
	<u>Halloween:</u> Halloween shall be defined as	Father	Mother
	beginning on October 31 st at 9:00 a.m. and		
	concludes November 1 st at 9:00 a.m.		
	<u>Veterans' Day:</u> This holiday shall be defined as	Father	Mother
	November 11 th and the holiday will include the		
	weekend if the holiday occurs on a Friday,		
	Saturday, Sunday or Monday of any given year. In		
	the event the holiday occurs on a Tuesday,		
	Wednesday or Thursday, it will be treated as a one		
	day holiday and shall begin at 9:00 a.m. on		
	November 11 th and continue until November 12 th		
	at 9:00 a.m.		
	<u>Thanksgiving and Family Day:</u> This holiday shall	Mother	Father
	be defined as the fourth Thursday in November		
	and the Friday following the fourth Thursday in		
	November and shall begin at 3:00 p.m. on the day		
	school recesses preceding the holiday and		
	concludes at 9:00 a.m. (or return to school) on the		
	first weekday following the holiday.		
	<u>Winter Break:</u> Winter Break shall be divided into		
	two (2) periods with the first period commencing		

when school recesses for Winter Break (or 3:00 p.m. if the children are not in school) and continue until the midpoint of Winter Break. If the midpoint falls on December 25 th , the parties shall exchange the children on December 26 th at 10:00 a.m. The second period shall commence on the midpoint of Winter Break at 10:00 a.m. and continues until school is scheduled to resume (or 9:00 a.m. if the children are not in school).		
<u>First Period/Christmas Day (December 25th)</u>	Mother	Father
<u>Second Period/New Year's Day (January 1st)</u>	Father	Mother
<u>Children's Birthdays:</u> The children's birthdays shall be defined as beginning on the day of the birthday at 9:00 a.m. and concludes the following day at 9:00 a.m.	Mother	Father
<u>Parents' Birthdays:</u> The children shall reside with each parent on his/her birthday on the individual day at 9:00 a.m. and concludes the morning following the individual day at 9:00 a.m. Father's birthday is May 26 th . Mother's birthday is August 17 th .		
<u>Vacations:</u> Each parent shall be entitled to 14 days of vacation time annually, upon 30 days written notice to the other parent. In the event that the parents' schedule conflicting vacations with the minor child, Mother's plans shall be given priority in even-numbered years and Father's plans shall be given priority in odd-numbered years. Neither parent shall schedule vacation time during the other parent's holiday time or during time the child is scheduled to be in school.		

IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED and DECREED that any holiday, break or special occasion not specifically mentioned in this Decree shall be celebrated with the parent who is regularly scheduled to be with the minor children on that day.

IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED and DECREED that if either parent is required to work during their designated holiday visitation time, the other parent will be entitled to have the children during the time the other parent is working, without penalty to the working parent.

1 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED and
2 DECREED that the parents shall be flexible and act in good faith so that the
3 children may participate in social activities (i.e., weddings, funerals, family
4 reunions, birthday parties, etc.) during the other parent's custodial time.

5 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED AND
6 DECREED that the parents understand and agree that the custody and holiday
7 visitation schedule may be modified at any time by mutual agreement of the parents,
8 and the parents will endeavor to work together with respect to custody of the minor
9 children in a manner which best serves the children's interests. Such revisions shall
10 be in writing, signed and dated by both parents. However, both parents understand
11 that the agreed upon changes do not modify this Court Order. In the event of
12 controversy, this Order of the Court will remain in full force and effect until
13 modified by the Court.

14 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED AND
15 DECREED that the parties understand and agree that the children shall continue to
16 be able to participate in all extra curricular and sports activities in which they have
17 already been participating. The parents will cooperate regarding transportation to
18 ensure that their children will continue to participate in all extra curricular and
19 sports activities in which they have already been participating.

20 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED AND
21 DECREED that neither parent will sign the children up for any new extra-curricular
22 activities that will infringe upon the other parent's scheduled time with the children,
23 without the written consent of the other parent, before enrolling the children in the
24 extra-curricular activity.

25 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED AND
26 DECREED that the parents agree that they will consider the children's wishes and
27 input with regard to the children's participation in extra-curricular activities.

28 . . .

1 NOTICE IS HEREBY GIVEN that the following statutory notices relating
2 to custody are applicable to FATHER and MOTHER:

3 A. Pursuant to EDCR 5.301, the parties, and each of them, are hereby
4 placed on notice of the following:

5 All lawyers and litigants possessing knowledge of matters being
6 heard by the family division are prohibited from:

7 (a) Discussing the issues, proceedings, pleadings, or papers on
8 file with the court with any minor child;

9 (b) Allowing any minor child to review any such proceedings,
10 pleadings, or papers or the record of the proceedings before the court,
11 whether in the form of transcripts, audio, or video recordings, or
12 otherwise;

13 (c) Leaving such materials in a place where it is likely or
14 foreseeable that any child will access those materials; or

15 (d) Knowingly permitting any other person to do any of the things
16 enumerated in this rule, without written consent of the parties or the
17 permission of the court.

18 B. Pursuant to NRS 125C.006, the parties, and each of them, are hereby
19 placed on notice of the following:

20 1. If primary physical custody has been established pursuant to an
21 order, judgment or decree of a court and the custodial parent intends to
22 relocate his or her residence to a place outside of this State or to a place
23 within this State that is at such a distance that would substantially
24 impair the ability of the other parent to maintain a meaningful
25 relationship with the child, and the custodial parent desires to take the
26 child with him or her, the custodial parent shall, before relocating:

27 (a) Attempt to obtain the written consent of the noncustodial parent
28 to relocate with the child; and

(b) If the noncustodial parent refuses to give that consent, petition
the court for permission to relocate with the child.

2. The court may award reasonable attorney's fees and costs to the
custodial parent if the court finds that the noncustodial parent refused
to consent to the custodial parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the custodial parent.

3. A parent who relocates with a child pursuant to this section without
the written consent of the noncustodial parent or the permission of the
court is subject to the provisions of NRS 200.359.

25 C. Pursuant to NRS 125C.0065, the parties, and each of them, are hereby
26 placed on notice of the following:

27 1. If joint physical custody has been established pursuant to an order,
28 judgment or decree of a court and one parent intends to relocate his or
her residence to a place outside of this State or to a place within this

1 State that is at such a distance that would substantially impair the
2 ability of the other parent to maintain a meaningful relationship with
the child, and the relocating parent desires to take the child with him
or her, the relocating parent shall, before relocating:

3 (a) Attempt to obtain the written consent of the non-relocating
parent to relocate with the child; and

4 (b) If the non-relocating parent refuses to give that consent, petition
the court for primary physical custody for the purpose of relocating.

5
6 2. The court may award reasonable attorney's fees and costs to the
relocating parent if the court finds that the non-relocating parent
refused to consent to the relocating parent's relocation with the child:

7 (a) Without having reasonable grounds for such refusal; or

8 (b) For the purpose of harassing the relocating parent.

9 3. A parent who relocates with a child pursuant to this section before
the court enters an order granting the parent primary physical custody
of the child and permission to relocate with the child is subject to the
provisions of NRS 200.359.

10
11 D. Pursuant to chapters 125A of NRS and NRS 125C.0601 to 125C.0693,
12 the parties, and each of them, are hereby placed on notice of the following:

13 PENALTY FOR VIOLATION OF ORDER: THE
14 ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN
15 VIOLATION OF THIS ORDER IS PUNISHABLE AS A
16 CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS
17 200.359 provides that every person having a limited right of custody
18 to a child or any parent having no right of custody to the child who
19 willfully detains, conceals, or removes the child from a parent,
guardian or other person having lawful custody or a right of visitation
of the child in violation of an order of this court, or removes the child
from the jurisdiction of the court without the consent of either the court
or all persons who have the right to custody or visitation is subject to
being punished for a category D felony as provided in NRS 193.130.

20 E. Pursuant to provisions of NRS 125C.0045(7), the parties, and each of
21 them, are hereby placed on notice that the terms of the Hague Convention of
22 October 25, 1980, adopted by the 14th Session of the Hague Conference on Private
23 International Law apply if a parent abducts or wrongfully retains a child in a foreign
24 country as follows:

25 Section 8: If a parent of the child lives in a foreign country or has
significant commitments in a foreign country:

26 (a) The parties may agree, and the court shall include in the order for
27 custody of the child, that the United States is the country of habitual
28 residence of the child for the purposes of applying the terms of the
Hague Convention as set forth in Subsection 7.

1 (b) Upon motion of the parties, the court may order the parent to post
2 a bond if the court determines that the parent poses an imminent risk
3 of wrongfully removing or concealing the child outside the country of
4 habitual residence. The bond must be in an amount determined by the
5 court and may be used only to pay for the cost of locating the child and
6 returning him to his habitual residence if the child is wrongfully
7 removed from or concealed outside the country of habitual residence.
8 The fact that a parent has significant commitments in a foreign country
9 does not create a presumption that the parent poses an imminent risk
10 of wrongfully removing or concealing the child.

11 F. The parents understand and acknowledge that, pursuant to the terms of
12 the Parental Kidnaping Prevention Act, 28 U.S.C. §1738A, and the Uniform Child
13 Custody Jurisdiction and Enforcement Act, NRS 125A.005, et seq., the courts of
14 Nevada have exclusive modification jurisdiction of the custody, visitation, and child
15 support terms relating to the child at issue in this case so long as either of the
16 parents, or the child, continue to reside in Nevada.

17 G. The parents acknowledge that the United States is the country and
18 Nevada is the State of habitual residence of the minor child herein.

19 The above STIPULATED PARENTING AGREEMENT reflects the rights
20 and obligations of each parent as they pertain to the legal and physical custody of
21 the parents' minor children. The parents hereby agree to fully comply with the same;
22 and in witness whereof, the parents hereto have hereunto set their hands to this
23 STIPULATED PARENTING AGREEMENT the year and date written below each
24 parents' respective signature.

25 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED AND
26 DECREED that, by and between the parties hereto, that the above and foregoing
27 STIPULATED PARENTING AGREEMENT is acceptable to the parents, is fair, is
28 in the children's best interest; and the parents respectfully request the Court to adopt

...

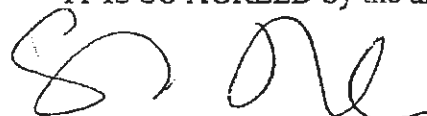
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1 and ratify the same, and to enter the said STIPULATED PARENTING
2 AGREEMENT as the Order of this Court in any divorce proceeding filed to
3 terminate the parties' marriage.

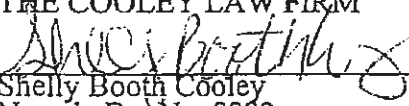
4 IT IS SO AGREED by the undersigned this ____ day of July, 2017.

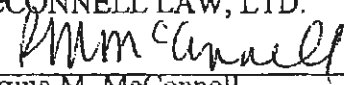
5
6 
7 SARAH ROSE
Defendant

8 
9 DAVID ROSE
Plaintiff

10 THE COOLEY LAW FIRM

11 McCONNELL LAW, LTD.

12 
13 Shelly Booth Cooley
14 Nevada Bar No. 8992
15 10161 Park Run Drive, Suite 150
16 Las Vegas, Nevada 89145
17 Attorneys for Defendant,
18 SARAH ROSE

19 
20 Regina M. McConnell
21 Nevada Bar No. 8029
22 9017 S. Pecos Road, Suite 4445
23 Henderson, Nevada 89074
24 Attorneys for Plaintiff,
25 DAVID ROSE

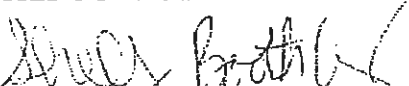
26
27 IT IS SO ORDERED this ____ day of OCT 25 2017, 2017.

28 
District Court Judge
RICK

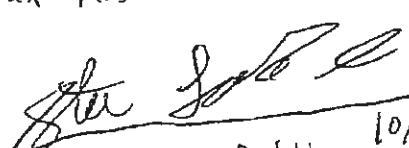
Respectfully Submitted:

THE COOLEY LAW FIRM

State of Nevada
County of Clark

21 
22 Shelly Booth Cooley
23 Nevada Bar No. 8992
24 10161 Park Run Drive, Suite 150
25 Las Vegas, Nevada 89145
26 Attorneys for Defendant,
27 SARAH ROSE

Signed and sworn to (or affirmed)
before me on Oct 11, 2017 by
Sarah Rose

28 
Notary Public 10/11/17

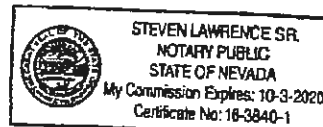


Exhibit “B”

MEMORANDUM OF UNDERSTANDING

The parties, David Rose ("David") and Sarah Rose ("Sarah"), have met in mediation to resolve certain disputes and entered into an agreement in case Number D-17-547250-D in Dept. I of the Eighth Judicial District Court, Clark County, Nevada, on March 23, 2018. By this memorandum, the parties desire to memorialize their agreement resolving all issues in the above referenced case. The memorandum addresses the material terms of the agreement, and is intended to bind the parties to those terms. The parties agree, however, that counsel for Sarah shall draft a final formal agreement incorporating the terms herein. That agreement shall be ratified by the Court, but shall not merge and shall retain its separate nature as a contract.

1. The parties agree to the following:

SARAH shall receive as her sole and separate property, free of all claims of David, the following:

- (1) 2012 Scion;
- (2) Any and all furniture and furnishings in her possession;
- (3) Her interest in his Nevada PERS pursuant to *Gemma v. Gemma*;
- (4) All bank accounts in her name;

David shall receive as his sole and separate property, free of all claims of Sarah, the following:

- (1) 2015 Dodge Challenger;
- (2) Any and all furniture and furnishings in his possession;
- (3) His interest in his Nevada PERS pursuant to *Gemma v. Gemma*;
- (4) All bank accounts in his name;

2. David shall receive \$5,000 from the approximate \$54,868.45 in proceeds of the marital home and Sarah shall receive the remainder. Of the remainder of the sale proceeds, \$22,434.22 shall be as and for lump sum non-modifiable alimony. The parties agree that the alimony amount shall be tax deductible to David and taxed as income to Sarah.

3. David shall pay \$1,886.00 per month for child support effective April 1, 2018. David Shall also pay \$13,000 in constructive child support arrears. The arrears shall be payable in monthly payments of \$270.00 for 48 months commencing April 1, 2018.

4. The parties dog shall travel with the children between homes once Sarah has her own home. If either party no longer wants the dog there is a "free" right of first refusal to the other party.

5. Each party shall be responsible for their separate debt including the debt on their respective vehicles and any and all credit card debt.

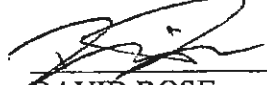
6. The parties shall follow and be subject to Department I's Behavior Order.

7. Sarah is waiving her community waste claim.


8. Each party shall be responsible for their own respective attorney's fees.

9. Each party acknowledges that they have been represented by counsel in the negotiation and preparation of this agreement, and voluntarily enters the agreement with full understanding of its terms. This agreement may be executed in counterparts.

AFFIRMED AND AGREED

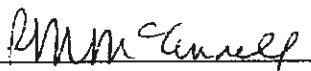


DAVID ROSE
Dated: 3-23-18




SARAH ROSE
Dated: 03/23/2018

Approved as to Form and Content:



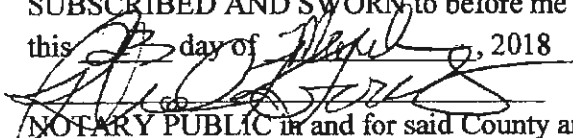
REGINA M. McConnell, ESQ.
Counsel for David Rose



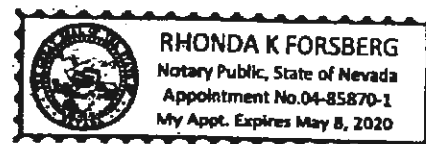
SHELLY BOOTH COOLEY, ESQ.
Counsel for Sarah Rose

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

DAVID ROSE did appear before me on the date set forth below, provided appropriate identification, and did sign the foregoing Marital Settlement Agreement as acknowledgement and agreement with its terms.

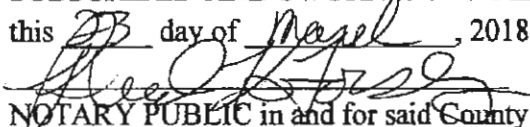
SUBSCRIBED AND SWORN to before me
this 23rd day of April, 2018


NOTARY PUBLIC in and for said County and State



SARAH ROSE did appear before me on the date set forth below, provided appropriate identification, and did sign the foregoing Marital Settlement Agreement as acknowledgement and agreement with its terms.

SUBSCRIBED AND SWORN to before me
this 23 day of April, 2018.


NOTARY PUBLIC in and for said County and State

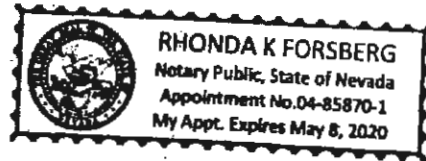


Exhibit “C”

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**DISTRICT COURT
CLARK COUNTY, NEVADA
FAMILY DIVISION**

Plaintiff,

Case No: _____

vs.

Dept No: I

Defendant.

BEHAVIOR ORDER

The parties are hereby ORDERED to do, or not to do the following, as stated in this Order:

1. No abusive contact (foul language, name calling, etc.) including telephone calls, voicemails, letters, email, texts, all forms of social media, etc., to the other party or to the child(ren).

2. Avoid any unnecessary contact with the other party's "significant other" and friends not in common with you and do not initiate conflicts with them.

3. No unnecessary contact with other people associated with or to the other party for purposes of discussing court proceedings or making negative/disparaging allegations against the other party (this includes all forms of social media).

1 4. You will advise all of your friends, relatives and "significant other" not
2
3 to disparage, criticize or harass the other party, and that co-parenting requires
4 facilitating a positive relationship with the other party; that you could have your
5 parenting time limited if you are unable to stop their negative behavior, and that
6 you may be sanctioned if the Court finds that you are knowingly allowing them
7 to violate the Behavior Order.
8

9 5. No harassment at the other party's place(s) of employment, including
10 contacting the employer to make negative or disparaging allegations; or to send
11 or drop off evidence as it relates to these court proceedings that appears
12 reasonably designed to put them, or likely to put them in a bad light or to get
13 them fired, or to have them suffer negative consequences as a result.
14
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16 6. No providing copies of unsolicited documents (personal letters, court
17 pleadings, emails, texts, etc.) to anyone associated with a party (significant
18 others, family members, neighbors, employers, etc.) for the intended purpose of
19 shedding the other party in a negative light.
20

21 7. Neither party shall post, nor shall you allow significant others or family
22 members on social media to post, including, but not limited to, FaceBook,
23 Twitter, YouTube, Instagram, LinkedIn, Tumblr, and Google+, any negative or
24 disparaging allegation against or negative image of the other party or anyone
25 associated with the other party.
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1 8. Pursuant to EDCR 5.301, you will not discuss any of the court issues or
2
3 proceedings with the minor children; this includes showing them any part of the
4 pleadings or attachments/exhibits (including audio and video) thereto; you will
5 take every precaution to secure copies of pleadings safely away from the eyes of
6 the children at all times. This means all evidence of litigation generated *on your*
7 *side* and from the other party's side.
8

9 9. Neither party shall interrogate the child(ren) as to the activities or
10 events at the other parent's residence, etc., and shall try to respect and not
11 interfere with the child(ren)'s privacy and relationship with the other parent; do
12 not place your child(ren) in a loyalty bind between yourself and the other parent;
13 your child(ren) need to be able to love both of you freely in both of your homes
14 for healthy child development.
15
16

17 10. Neither party shall interfere with the other party's contact with the
18 minor children, including but not limited to telephone, email, social networking
19 contacts, etc.; where telephone/video conferencing is part of your parent contact
20 you may not take a smart phone or iPad from a child as a means of discipline
21 when a child uses this technology to contact the non-residential parent. You must
22 maintain a device accessible to the child(ren) charged or with accessible charger
23 at all times, absent a Court Order otherwise.
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1 11. Neither party shall threaten to commit or actually commit an act of
2 violence upon the other party, upon the child(ren) in common of the parties, upon
3 child(ren) not in common of a party, or upon the significant other, friend,
4 relative, employer, employee, neighbor, etc. of a party.
5

6 12. Child custody exchanges, visitations, etc., shall be done in a civil, law
7 abiding manner and reasonably close to the times specified by the Court. In the
8 event of an emergency or unforeseen circumstance that could affect an exchange
9 of the child or the time of the exchange, a party shall call or contact the other
10 party as soon as is reasonably possible.
11

12 13. In the event of an emergency or unforeseen circumstance that could
13 affect an exchange of the child or the time of the exchange, the party
14 experiencing the emergency shall contact the other party as soon as reasonably
15 possible.
16

17 14. There shall be no spoliation, destruction, alteration or modification of
18 electronic evidence such as emails, texts, social media of all forms, or voicemails,
19 audio recordings, video recordings, or phones, iPads, etc., with any information
20 that either party or the Court may deem relevant to the current court proceedings.
21

22 15. There shall be no invasion of the electronic devices, email accounts,
23 social media accounts, separate bank accounts, safe deposit boxes, separate
24 residences or separate vehicles, etc. of the other party.
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1 16. Except as modified herein, all other court orders remain in full force
2
3 and effect.

4 **POSSIBLE SANCTIONS**

5 The parties are HEREBY PUT ON NOTICE THAT EACH AND EVERY
6
7 VIOLATION of this order, if admitted to, or if found after evidentiary hearing to
8
9 have committed an act that violates this Order, may result in the party being held
10
11 in contempt of court pursuant to NRS Ch. 22, which could result in a fine of
12 \$500.00 and/or up to 25 days in jail and/or attorneys fees for EACH
13
14 VIOLATION.

15 DATED this _____ day of _____, 20____.

16
17 _____
18 **CHERYL B. MOSS**
19 DISTRICT COURT JUDGE
20 FAMILY DIVISION DEPT. I
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Exhibit 3



MOT

REGINA M. McCONNELL, ESQ.
Nevada State Bar No. 8029
McCONNELL LAW, LTD.
9017 S. Pecos Road, Suite 4445
Henderson, Nevada 89074
Telephone: (702) 487-3100
E-mail: Regina@MLVegas.com
Attorney for Plaintiff, David Rose

DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID ROSE,

Plaintiff,

vs.

SARAH ROSE,

Defendant.

CASE NO: D-17-547250-D

DEPT NO: I

Date of Hearing: 07/23/2018

Time of Hearing: 10:30 am

ORAL ARGUMENT REQUESTED: YES

**MOTION TO SET ASIDE THE PARAGRAPH REGARDING SURVIVOR BENEFITS IN THE
DECREE OF DIVORCE BASED UPON MISTAKE**

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

COMES NOW, Plaintiff, DAVID ROSE, by and through his attorney of record, REGINA M. McCONNELL, ESQ., of McCONNELL LAW, LTD., and hereby files this Motion to Set Aside the Paragraph Regarding Survivor Benefits in the Decree of Divorce Based Upon Mistake. Plaintiff seeks the following relief: 1) that the Court grants Plaintiff's motion in its entirety and order the survivor beneficiary language be removed from the Decree of Divorce based upon mistake; 2) that Plaintiff be awarded attorney's fees; and 3) any and all additional relief the Court deems necessary.

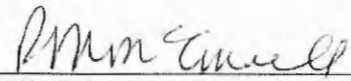
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1 This Motion is based on all pleadings, exhibits, points, and authorities, Affidavit of DAVID
2 ROSE and any arguments at the time of said hearing.

3 DATED this 25th day of April, 2018.

4 McCONNELL LAW, LTD.

5
6 
7 REGINA M. McCONNELL, ESQ.
8 Nevada Bar No. 8029
9 9017 S. Pecos Road, Suite 4445
10 Henderson, Nevada 89074
11 Attorneys for Plaintiff

12 **NOTICE OF MOTION**

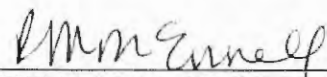
13 TO: SARAH ROSE, Defendant; and

14 TO: SHELLY BOOTH COOLEY, ESQ., her Attorney.

15 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing
16 Motion on for hearing on the 23 day of July, 2018, at the hour of 10:30 o'clock a m. in
17 Dept. I of the Family Court Division of District Court, which is located at 601 N. Pecos Road, Las
18 Vegas, Nevada or as soon thereafter as Counsel may be heard.

19 DATED this 25th day of April, 2018.

20 McCONNELL LAW, LTD.

21
22 
23 REGINA M. McCONNELL, ESQ.
24 Nevada Bar No. 8029
25 9017 S. Pecos Road, Suite 4445
26 Henderson, Nevada 89074
27 Attorneys for Plaintiff
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

Plaintiff ("David") and Defendant ("Sarah") were ordered to attend mediation with an attorney settlement master on November 1, 2017 at the Case Management Conference. As a result, the parties attended mediation with Rhonda K. Forsberg on March 23, 2018 and the parties reached an agreement. At the outset of the mediation, when all parties were sitting together, Ms. Forsberg discussed how the process would work and the issues that would be addressed to try to get the case settled. The parties both actively participated in the mediation and it and the parties agreed that David's Nevada PERS pension would be divided per Gemma, that David would pay Sarah a lump sum payment from his share of the house proceeds as taxable alimony and they agreed upon child support arrears. Defendant's counsel began working on a Decree during the mediation but unfortunately, her computer ran out of battery. As such, a Memorandum of Understanding ("Memorandum") was drafted setting forth the full terms of the agreement. (See Memorandum of Understanding, Exhibit 1, attached to Plaintiff's Appendix of Exhibits.) The Memorandum, which was attached to the Decree, did not specify that Sarah would receive any survivor benefits from David's pension because David did not agree to any such term. Further, there was no agreement that David would be solely responsible for the children's healthcare premiums. After leaving the mediation, Sarah's counsel was able to get to a computer locally (near the mediator's office) so as to get the Decree finalized and signed. Unfortunately, upon a later reading of the Decree, it came to undersigned counsel's attention that Sarah had included an award of the PERS survivor benefit option, even though it was never agreed upon. To this end, the Decree has indicated that David will be responsible for providing insurance for the children, without giving him the benefit of the cost, which was not in the Memorandum. Further, the Decree states that David is awarded one-half of the community portion of his LVMPD pension pursuant to Gemma v Gemma and Fondi v Fondi and

1 based upon a selection of Option 2 being made at the time of retirement so as to name Sarah as the
2 irrevocable survivor beneficiary. This was not included in the Memorandum because it was not
3 agreed upon by the parties at the time of the mediation. Therefore, David requests that this
4 paragraph be set aside as it was not agreed upon and it was mistakenly included and not noticed
5 upon signing.

6 II. LEGAL ARGUMENT

7 A. THE DECREE MUST BE SET ASIDE BASED UPON MISTAKE BECAUSE THE PARTIES 8 DID NOT AGREE

9 As discussed above, the agreements that were made at the mediation were reflected in a fully
10 signed and notarized Memorandum but were not correctly reflected in the Decree of Divorce. The
11 Decree was signed by mistake according to NRCP 60 (b) which states in pertinent part as follows:
12

13 **NRCP 60 (b) Mistakes; Inadvertence; Excusable Neglect; Newly**
14 **Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are
15 just, the court may relieve a party or a party's legal representative from a
16 final judgment order, or proceeding for the following reasons: (1)
17 mistake, inadvertence, surprise, or excusable neglect; (2) newly
18 discovered evidence which by due diligence could not have been
19 discovered in time to move for a new trial under Rule 59(b); (3) fraud
20 (whether, heretofore denominated intrinsic or extrinsic),
21 misrepresentation or other misconduct of an adverse party; (4) the
22 judgment is void; or, (5) the judgment has been satisfied, released, or
23 discharged, or a prior judgment upon which it is based has been reversed
24 or otherwise vacated, or it is no longer equitable that an injunction should
25 have prospective application. The motion shall be made within a
26 reasonable time, and for reasons (1), (2), and (3) not more than 6 months
27 after the proceeding was taken or **the date that written notice of entry of**
28 **the judgment or order was served.** A motion under this subdivision (b)
does not affect finality of a judgment or suspend its operation. This rule
does not limit the power of a court to entertain an independent action to
relieve a party from a judgment, order, or proceeding, or to set aside a
judgment for fraud upon the court. Writs of coram nobis, coram vobis,
audita querela, and bills of review and bills in the nature of a bill of
review, are abolished, and the procedure for obtaining any relief from a
judgment shall be by motion as prescribed in these rules or by an
independent action. (Emphasis added).

1 As this court is aware, the Nevada Supreme Court in *Carlson v. Carlson*, 108 Nev. 358, 832 P.2d
2 380 (1992); which noted that the purpose of Rule 60 (b) was to redress any injustices that may have
3 resulted because of excusable neglect or the wrongs of an opposing party, and should be liberally
4 construed to do so, citing to *Nevada Indus. Dev. v. Benedetti*, 103 Nev. 360, 741 P.2d 802 (1987). *Lesley v.*
5 *Lesley*, 113 Nev. 727, 941 P.2d 451 (1997), the Nevada court reiterated that under NRCP 60(b), the
6 district court has "wide discretion in deciding whether to grant or deny a motion to set aside a
7 judgment," but added that "this legal discretion cannot be sustained where there is no competent
8 evidence to justify the court's action." The factors to be applied by the court in an NRCP 60(b)(1)
9 motion are "whether the movant: (1) promptly applied to remove the judgment; (2) lacked intent to
10 delay the proceedings; (3) demonstrated good faith; (4) lacked knowledge of procedural
11 requirements; and (5) tendered a meritorious defense to the claim for relief." *Id.* at 732, citing to
12 *Bauwens v. Evans*, 109 Nev. 537, 853 P.2d 121 (1993).

13
14
15 The Court announced that when it reviewed district court decisions on NRCP 60(b) motions, it
16 also examined whether the case "should be tried on the merits for policy reasons," *Id.* at 734 citing to
17 *Kahn v. Orme*, 108 Nev. 510, 835 P.2d 790 (1992). The Court expanded on that holding, stating that:
18 "This court has held that Nevada has a basic underlying policy that cases should be decided on the
19 merits. . . .Our policy is heightened in cases involving domestic relations matters," *Id.* at 734 to citing
20 *Hotel Last Frontier Corp. v. Frontier Properties, Inc.*, 79 Nev. 150, 380 P.2d 293 (1963), and *Price v. Dunn*,
21 106 Nev. 100, 787 (1990).

22
23 The Decree of Divorce that was entered by this Court warrants a set aside only as it relates to
24 the particular portion regarding the award of David's survivor benefit to Sarah. As stated above, the
25 terms of the parties' agreement at mediation were put in writing in the Memorandum and signed by
26 the parties. Sarah knew that the parties did not agree that she was to receive his survivor benefits and
27 she is only basing it on the fact that he had indicated that he wanted his children taken care of in the
28

1 future - this does not translate into giving her any survivor benefits. In total disregard of what was
2 agreed upon and set forth in the Memorandum, the Decree awarded Sarah David's survivor benefits.

3 Unfortunately, when reviewing the Decree, counsel inadvertently did not see that the option
4 for survivor benefits was listed and awarded to Sarah. Further, David believed, and had no reason
5 not to believe, that the Decree was going to mirror the Memorandum, since that is what the parties
6 agreed to at the mediation. He would not have signed the Decree, had he realized the survivor
7 benefits were now being awarded to Sarah. This is a "bait and switch" because the intent as set forth
8 in the Memorandum was that there was no award of survivor benefits. However, that was stripped
9 away during the drafting of the Decree; which sadly, and by mistake, David had missed. In Nevada,
10 unless the parties specifically agree to an award of survivor benefits, it is not considered a part of the
11 pension. In the case at hand, David did not specifically agree to the award of survivor benefits and it
12 was mistakenly placed in the Decree in complete disregard to the terms agreed upon and set forth in
13 the Memorandum.
14

15
16 David's request is certainly timely made to this court. David believed that the parties were still
17 under the considerations of mediation, again, under the intent of waiving the survivor benefit option.
18 It seems rather questionable that Defendant's attorney would disregard the agreements made, then
19 enter into an agreement with the decisions dismissed.
20

21 **B. DAVID SHOULD BE AWARDED ATTORNEY'S FEES FOR HAVING TO BRING THIS**
22 **MOTION**

23 David respectfully requests an award of attorney's fees for having to bring this motion. To
24 this end, NRS 18.010 states in pertinent part:

25 2. In addition to the cases where an allowance is authorized by specific statute,
26 the court may make an allowance of attorney's fees to a prevailing party:

27 (a) When he has not recovered more than \$20,000; or
28

1 (b) Without regard to the recovery sought, when the court find that the
2 claim, counterclaim, cross-claim or third party complaint or defense of the
3 opposing party was brought without reasonable ground or to harass the
4 prevailing party.

5 Further, in *Halbrook v Halbrook*, 114 Nev. 1455, 971 P.2d 1262 (1998), the Nevada Supreme
6 Court held that the power of the court to award attorney fees in divorce actions remain parts of the
7 continuing jurisdiction of the court in appropriate post-judgment motions relating to support and
8 child custody. Moreover, in *Love v Love*, 114 Nev. 572, 959 P.2d 523 (1998), the court reaffirmed NRS
9 18.010(2)(b) and NRS 125.150(3), holding that the district court can award fees in a post-judgment
10 motion in a divorce case, citing with approval *Leeming v Leeming*, 87 Nev. 530, 490 P.2d 342 (1971);
11 *Korbel v Korbel*, 101 Nev. 140, 696 P2d 993 (1985); *Fletcher v Fletcher*, 89 Nev. 540, 516 P.2d 103 (1973).

12 Finally, David respectfully requests the Court award him attorney's fees and costs incurred in
13 having to file this motion. Sarah knows that David did not agree to give her any survivor benefits to
14 his pension and it was not included in the Memorandum, but she refused to agree to make the
15 change. Under *Brunzell v Golden Gate National Bank*, 85 Nev. 345 (1969), the Court should take into
16 consideration the following factors when determining an award of attorney's fees: (1) the qualities of
17 the advocate, (2) the character and difficulty of the work performed; (3) the work actually performed
18 by the attorney; and (4) the result obtained. The undersigned has been practicing law over fifteen
19 years, with approximately 95% of her practice dedicated to all aspects of family law for over ten years.
20 The character and difficulty of the work performed in this matter is moderate, with the main issues
21 being Sarah's actions in including language in the Decree awarding her survivor benefits to David's
22 pension when it was not agreed upon nor included in the Memorandum because it was not agreed
23 upon between the parties. To date, the work performed on this matter includes researching the issue
24 of survivor benefits when not agreed upon, trying to resolve the issue, reviewing e-mails, drafting the
25 Motion and conversations with the client regarding the motion. Counsel will provide an Affidavit of
26 Fees upon request by the Court, following the hearing.
27
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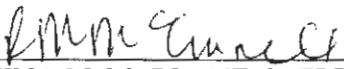
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III. CONCLUSION

WHEREFORE, based upon the foregoing, David requests that this Court grant his Motion in its entirety and order that the paragraph awarding Sarah any survivor benefits to David's pension be removed and that she not be awarded any benefits from his pension. Finally, David requests that he be awarded his attorney's fees in having to file this Motion.

DATED this 25th day of April, 2018.

McCONNELL LAW, LTD.


REGINA M. McCONNELL, ESQ.
Nevada Bar No. 8029
9017 S. Pecos Road, Suite 4445
Henderson, Nevada 89074
E-mail: Regina@MLVegas.com
Attorneys for Plaintiff

DECLARATION OF DAVID ROSE

I, DAVID ROSE, declare under penalty of perjury that the following statements are true and correct:

1. That I am the Plaintiff in the above-entitled matter.

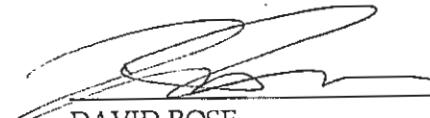
2. That I have read the above and foregoing Motion and know the contents thereof and that the same is true of my own knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

3. That I attended mediation and the agreed upon terms were set forth in a Memorandum of Understanding.

4. That I never agreed to give Sarah any portion of my survivor benefits from my pension.

Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 25 day of April, 2018.



DAVID ROSE

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

DAVID ROSE
Plaintiff/Petitioner

vs.

SARAH ROSE
Defendant/Respondent

Case No. D-17-547250-D

Dept. I

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☐ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☒ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on 4/11/2018.
 - ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
- ☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
- OR-
- ☐ **\$57** The Motion/Opposition being filed with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☒ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Plaintiff Date April 25, 2018

Signature of Party or Preparer *pmcneel*

Exhibit B

Exhibit B



ORDR (CIV)

DENNIS L. KENNEDY

Nevada Bar No. 1462

PAUL C. WILLIAMS

Nevada Bar No. 12524

BAILEY ♦ KENNEDY

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

PWilliams@BaileyKennedy.com

*Attorneys for Defendant Sarah Janeen Rose
in Conjunction with the Legal Aid Center of
Southern Nevada Pro Bono Project*

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,

Plaintiff,

vs.

REGINA McCONNELL, ESQ., an individual;
McCONNELL LAW LTD., a Nevada limited
liability company; SHELLY BOOTH COOLEY,
ESQ., an individual; THE COOLEY LAW
FIRM, a Nevada Professional Limited Liability
Company; SARAH JANEEN ROSE, an
individual; DOE INDIVIDUALS I through X
and ROE CORPORATIONS XI through XX,

Defendants.

Case No. A-20-815750-C

Dept. No. 11

**ORDER GRANTING IN PART, AND
DENYING IN PART, DEFENDANT SARAH
JANEEN ROSE'S SPECIAL MOTION TO
DISMISS PURSUANT TO NRS 41.660
(ANTI-SLAPP)**

This matter came before the Court, Department XI (the Honorable Elizabeth Gonzalez presiding), on August 11, 2020 (in chambers) on:

- Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) (hereinafter, the "Special Motion to Dismiss"); and
- Defendants Regina McConnell, Esq. and McConnell Law Ltd.'s Joinder to Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), or, in the

Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) (hereinafter, the “Joinder”).

FINDINGS OF FACT

The Court, having examined the briefs of the parties, the records and documents on file, being fully advised of the premises, and good cause appearing, hereby makes the following Findings of Fact with regard to the Special Motion to Dismiss and the Joinder:

1. Plaintiff David John Rose (“David”) and Defendant Sarah Janeen Rose (“Sarah”) were married on June 17, 2006.

2. On February 22, 2017, David filed a Complaint for Divorce against Sarah; the divorce matter is entitled David John Rose v. Sarah Janeen Rose, Case No. D-17-547250-D (the “Divorce Action”), which is currently pending before the Family Division of the Eighth Judicial District Court (the “Family Court”).

3. On March 23, 2018, Sarah and David, along with their respective counsel, participated in a mediation with the Honorable Rhonda K. Forsberg¹ in an effort to resolve the Divorce Action.

4. At the time of the mediation, David was represented by Defendants Regina McConnell, Esq. and McConnell Law Ltd. (jointly, the “McConnell Defendants”) and Sarah was represented by Defendants Shelly Booth Cooley (“Cooley”) and The Cooley Law Firm (jointly the “Cooley Defendants”).

5. David alleges, and Sarah denies, that during the course of the mediation Sarah requested that David name her as the survivor beneficiary of David’s Public Employees Retirement System (“PERS”) pension. David alleges, and Sarah denies, that David refused to grant survivor benefits to Sarah.

6. The mediation was successful and Judge Forsberg drafted a three-page Memorandum of Understanding (the “MOU”). The MOU states that its purpose was “to memorialize” the parties’ agreement. The MOU stated it included the “material terms” of their

¹ Judge Forsburg was appointed to Department G of the Family Division of the Eighth Judicial District Court after the mediation.

1 agreement and was intended to bind the parties to those material terms. The MOU provided “that
2 counsel for Sarah shall draft a final formal agreement incorporating the terms herein,” and “[t]hat
3 [final formal] agreement shall be ratified by the Court, but shall not merge and shall retain its
4 separate nature as a contract.” The MOU did not address survivor benefits.

5 7. After Sarah and David executed the MOU, Sarah (through her counsel) typed a 39-
6 page Stipulated Decree of Divorce (the “Divorce Decree”), to which the MOU was included as an
7 exhibit. David and his counsel (McConnell) were given a copy of the Divorce Decree for their
8 review. The Divorce Decree provided that David would name Sarah as the irrevocable survivor
9 beneficiary of David’s PERS pension.

10 8. Sarah and David executed the Divorce Decree and Sarah (through her counsel)
11 submitted the Divorce Decree to the judge assigned to the Divorce Action—the Divorce Decree
12 was filed on April 11, 2018.

13 9. On April 25, 2018, David filed (in the Divorce Action) a Motion to Set Aside the
14 Paragraph Regarding Survivor Benefits in the Decree of Divorce Based Upon Mistake (the
15 “Motion to Set Aside”). In essence, David contends that he did not agree to designate Sarah as the
16 survivor beneficiary and the inclusion of that term in the Divorce Decree was a mistake. The
17 Family Court initially granted David’s Motion to Set Aside, removing the award of survivor
18 benefits to Sarah from the Divorce Decree.

19 10. On October 9, 2018, Sarah filed a Motion to Alter or Amend Judgment, or, in the
20 Alternative, for New Trial Pursuant to NRCP 59(a)(7). On January 16, 2019, the Family Court
21 entered an order setting aside its prior order granting David’s Motion to Set Aside and set the
22 matter (including David’s Motion to Set Aside) for an evidentiary hearing.

23 11. The Court began the evidentiary hearing on the Motion to Set Aside (and other
24 motions) on January 27, 2020. The evidentiary hearing has not yet concluded.

25 12. On May 29, 2020, David initiated this action.

26 13. David asserts various causes of action against the McConnell Defendants, alleging
27 they committed legal malpractice by “a. Failing to actively participate in drafting the Decree to
28 ensure the agreed upon terms are properly reflected in the final draft; b. Failing to properly read,

1 review, and object to the Decree that contained unfavorable terms that [David] did not agree to;
2 and c. Advising [David] to sign the Decree that contained unfavorable terms that [David] did not
3 agree to.” (Compl. ¶ 25.)

4 14. David asserts two causes of action against Sarah and the Cooley Defendants.

5 (a) First, David asserts a claim for civil conspiracy against Sarah and the Cooley
6 Defendants, alleging they “acted in concert to intentionally defraud [David] into signing the
7 legally binding Decree of Divorce with terms that were not agreed to” and that they “had no
8 intention of abiding to the agreed upon terms as outlined in the MOU.” (*Id.* ¶¶ 41-42.)

9 (b) Second, David asserts that Sarah and Cooley breached an agreement that
10 Sarah would not receive survivor benefits (which he alleges is reflected in the MOU even
11 though it does not address survivor benefits) by: “a. Drafting the Decree of Divorce, which
12 contained terms that SARAH would be entitled to survivorship benefits under Plaintiff’s
13 PERS account; b. Submitting the Decree of Divorce so that its terms become legally
14 enforceable; c. Seeking to enforce the survivorship benefit from the Decree, despite being
15 contradictory to the agreed upon terms of the MOU.” (*Id.* ¶ 47.)

16 CONCLUSIONS OF LAW

17 The Court, having examined the briefs of the parties, the records and documents on file,
18 being fully advised of the premises, and good cause appearing, hereby makes the following
19 Conclusions of Law with regard to the Special Motion to Dismiss and the Joinder:

20 15. In 1993, the Nevada legislature adopted an anti-SLAPP statute based upon
21 California’s anti-SLAPP statute. *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d
22 1276, 1281 (2009). “A SLAPP lawsuit is characterized as a meritless suit filed primarily to chill
23 the defendant’s exercise of First Amendment rights.” *Id.* at 752, 219 P.3d at 1280 (internal
24 quotation marks omitted). “SLAPP lawsuits abuse the judicial process by chilling, intimidating,
25 and punishing individuals for their involvement in public affairs.” *Id.* at 752, 219 P.3d at 1281.

26 16. Nevada’s anti-SLAPP statute provides that a defendant may file a special motion to
27 dismiss within 60 days after service of the complaint. NRS 41.660(1)-(2). Initially, a defendant
28 filing a special motion to dismiss has the initial burden of demonstrating, by a preponderance of the

evidence, that the claims at issue are “based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.” NRS 41.660(3)(a). Then, if the moving defendant meets her initial burden, the burden shifts to the plaintiff to demonstrate, with “prima facie evidence,” that he has a “probability of prevailing on the claim.” NRS 41.660(3)(c). If the plaintiff fails to meet his burden, the matter must be dismissed and “the dismissal operates as an adjudication on the merits.” NRS 41.660(5).

17. Nevada’s anti-SLAPP statute defines a “[g]ood faith communication in furtherance of the right to free speech in direct connection with an issue of public concern” by four categories of communication. *See* NRS 41.637. One such category protects “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . . **judicial body**” NRS 41.637(3) (emphasis added). To qualify for this category, “the statement must (1) relate to the substantive issues in the litigation and (2) be directed to persons having some interest in the litigation.” *Patin v. Ton Vinh Lee*, 134 Nev. 722, 726, 429 P.3d 1248, 1251 (2018). Finally, the communication must be “truthful or . . . made without knowledge of its falsehood.” NRS 41.637. The Court finds David’s civil conspiracy claim against Sarah concerns conduct and statements at issue related to the ongoing Divorce Action and thus is based on “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . . judicial body.” The Court further finds that Sarah’s conduct and statements “relate to the substantive issues in the litigation” and are “directed to persons having some interest in the litigation,”—specifically, to David and the Family Court. *See Patin*, 134 Nev. at 726, 429 P.3d at 1251. The Court further finds that Sarah’s conduct and alleged statements are not false—even assuming Sarah and David had orally agreed that Sarah would not receive survivor benefits at the mediation, neither their alleged agreement nor the inclusion of the survivor benefits in the Divorce Decree are false statements. *See* NRS 41.637. Accordingly, the Court finds that David’s civil conspiracy claim against Sarah is subject to a special motion to dismiss under Nevada’s anti-SLAPP statute.

18. The Court finds David’s breach of contract claim against Sarah is not based on “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . .

1 judicial body.” Accordingly, the Court finds that David’s breach of contract claim against Sarah is
2 not subject to a special motion to dismiss under Nevada’s anti-SLAPP statute.

3 19. The Court finds David has failed to demonstrate, with “prima facie evidence,” that
4 he has a “probability of prevailing” on his civil conspiracy claim. *See* NRS 41.660(3)(c).

5 (a) First, David’s conspiracy claim fails as matter of law because a client cannot
6 conspire with her legal counsel who is acting within the scope of attorney-client
7 relationship. *See Crossroads Partners v. Utah Crossing, Ltd.*, Nos. 98-15673, 98-15674,
8 1999 U.S. App. LEXIS 22721, at *10 (9th Cir. Sep. 9, 1999) (finding, under Nevada law, a
9 civil conspiracy between a client and a lawyer was barred because “[t]here can be no
10 conspiracy between an agent and its principal when the agent acts only in the agent’s
11 official capacity on behalf of the principal, and not for the agent’s private benefit.”); *Fraidin*
12 *v. Weitzman*, 611 A.2d 1046, 1079 (Md. 1992) (“There can be no conspiracy when an
13 attorney acts within the scope of his employment.”); *Macke Laundry Serv. Ltd. Pshp. v. Jetz*
14 *Serv. Co.*, 931 S.W.2d 166, 176 (Mo. Ct. App. 1996) (“As an agent of the client, an attorney
15 acts as the client’s alter ego and not for the attorney,” and thus “an identity between agent
16 and principal leads to a legal impossibility in the context of conspiracy,” because “[t]wo
17 entities which are not legally distinct cannot conspire with one another.”); *accord Collins v.*
18 *Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983) (“Agents and
19 employees of a corporation cannot conspire with their corporate principal or employer
20 where they act in their official capacities on behalf of the corporation and not as individuals
21 for their individual advantage.”).

22 (b) Second, David’s conspiracy claim fails as a matter of law because David
23 cannot assert fraud based on an alleged term (the survivor benefits) that is contradicted by
24 the unambiguous terms of a written agreement (the Divorce Decree). *See Rd. & Highway*
25 *Builders v. N. Nev. Rebar*, 128 Nev. 384, 390, 284 P.3d 377, 380 (2012).

26 (c) Third, David’s conspiracy claim fails as a matter of law because David
27 cannot assert fraud based solely on Sarah’s alleged failure to perform. *See id.* at 389, 284
28

P.3d at 380 (“[T]here is no inference of a fraudulent intent not to perform from the mere fact that a promise made is subsequently not performed.”).

ORDER

Based on the foregoing Findings and good cause appearing,

IT IS HEREBY ORDERED that the Special Motion to Dismiss is GRANTED pursuant to NRS 41.660 (anti-SLAPP) as to David’s civil conspiracy claim, which is hereby DISMISSED with prejudice.

IT IS FURTHER ORDERED that the Special Motion to Dismiss and Joinder are DENIED as to David’s breach of contract claim against Sarah.

IT IS FURTHER ORDERED that Sarah’s motions to dismiss under NRCP 12(b)(1) and NRCP 12(b)(5), sought in the alternative, are DENIED without prejudice to renewal in an NRCP 12(b) response.

DATED this 27th day of August, 2020.



THE HONORABLE ELIZABETH GONZALEZ

Respectfully Submitted By:

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

Attorneys for Defendant Sarah Janeen Rose

~~Approved as to Form and Content By:~~

~~COHEN | JOHNSON | PARKER | EDWARDS~~

By: _____

~~JAMES L. EDWARDS~~

~~ADAM C. EDWARDS~~

~~375 East Warm Springs Road, Suite 104~~

~~Las Vegas, Nevada 89119~~

~~Attorneys for Plaintiff David John Rose~~

Approved as to Form and Content By:

WILSON ELSER MOSKOWITZ EDELMAN & DICKER

By: /s/ Sheri Thome

SHERI THOME

6689 Las Vegas Boulevard, South, Suite 200

Las Vegas, Nevada 89119

Attorneys for Defendants Shelly Booth Cooley, Esq. and the Cooley Law Firm

Approved as to Form and Content By:

LIPSON NEILSON P.C.

By: /s/ Joseph Garin

JOSEPH GARIN

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89114

Attorneys for Defendants McConnell Law Ltd. and Regina McConnell Esq.

Paul Williams

From: Paul Williams
Sent: Friday, August 21, 2020 2:11 PM
To: 'jedwards@cohenjohnson.com'; 'aedwards@cohenjohnson.com'
Cc: Sharon Murnane; 'Kim Glad'; 'Thome, Sheri'; 'Maile, Lani U.'; 'Joe Garin'; 'Susana Nutt'; 'sjohnson@cohenjohnson.com'; 'sgondek@cohenjohnson.com'
Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Hi James and Adam,

Having not heard from you, we will submit the draft order to the Court (it is due today), using a strike-through on your signature block to indicate you have not approved as to form or content.

Thank you,

Paul C. Williams
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
(702) 562-8820 (Main)
(702) 789-4552 (Direct)
(702) 301-2725 (Cell)
(702) 562-8821 (Fax)
PWilliams@BaileyKennedy.com

*****This email is a confidential communication from Bailey Kennedy, LLP and is intended only for the named recipient(s) above and may contain information that is a trade secret, proprietary, privileged or attorney work product. If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at (702) 562-8820 and delete this email and any attachments from your workstation or network mail system.*****

From: Paul Williams
Sent: Wednesday, August 19, 2020 4:40 PM
To: jedwards@cohenjohnson.com; aedwards@cohenjohnson.com
Cc: Sharon Murnane <SMurnane@baileykennedy.com>; 'Kim Glad' <KGLad@lipsonneilson.com>; Thome, Sheri <Sheri.Thome@wilsonelser.com>; Maile, Lani U. <Lani.Maile@wilsonelser.com>; Joe Garin <JGarin@lipsonneilson.com>; Susana Nutt <SNutt@lipsonneilson.com>; sjohnson@cohenjohnson.com; sgondek@cohenjohnson.com
Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Hi James and Adam,

Following up on the draft order. If you do not have any proposed revisions, please confirm that I may affix your electronic signature to the order and submit it to the Court.

Thank you,

Paul C. Williams

Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
(702) 562-8820 (Main)
(702) 789-4552 (Direct)
(702) 301-2725 (Cell)
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From: Kim Glad <KGlad@lipsonneilson.com>
Sent: Monday, August 17, 2020 10:01 AM
To: Thome, Sheri <Sheri.Thome@wilsonelser.com>; Paul Williams <PWilliams@baileykennedy.com>;
jedwards@cohenjohnson.com; sjohnson@cohenjohnson.com; aedwards@cohenjohnson.com;
sgondek@cohenjohnson.com; Maile, Lani U. <Lani.Maile@wilsonelser.com>; Joe Garin <JGarin@lipsonneilson.com>;
Susana Nutt <SNutt@lipsonneilson.com>
Cc: Sharon Murnane <SMurnane@baileykennedy.com>
Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Dear Mr. Williams,

On behalf of Joe Garin, please be advised that you may affix his electronic signature to the Proposed Order.

Should you have any questions, please feel free to contact Mr. Garin directly.

Sincerely,
Kim



Kim Glad, Legal Assistant
Las Vegas Office
9900 Covington Cross, Suite 120
Las Vegas, NV 89144
(702) 382-1500 ext. 124
(702) 382-1512 (fax)
Email: kglad@lipsonneilson.com
Website: www.lipsonneilson.com

OFFICES IN NEVADA, MICHIGAN, ARIZONA, & COLORADO

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disclosure, copying, distribution or any action taken or omitted to be taken in reliance on the contents of this information is prohibited and may be unlawful. If you receive this message in error, or are not the named recipient(s), please notify the sender, delete this e-mail from your computer, and destroy any copies in any form immediately. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege.

From: Thome, Sheri <Sheri.Thome@wilsonelser.com>

Sent: Friday, August 14, 2020 2:25 PM

To: Paul Williams <PWilliams@baileykennedy.com>; jedwards@cohenjohnson.com; sjohnson@cohenjohnson.com; aedwards@cohenjohnson.com; sgondek@cohenjohnson.com; Maile, Lani U. <Lani.Maile@wilsonelser.com>; Joe Garin <JGarin@lipsonneilson.com>; Kim Glad <KGlad@lipsonneilson.com>; Susana Nutt <SNutt@lipsonneilson.com>

Cc: Sharon Murnane <SMurnane@baileykennedy.com>

Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Paul,

You may affix my electronic signature. Thank you.

Sheri Thome
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
6689 Las Vegas Blvd. South, Suite 200
Las Vegas, NV 89119
702.727.1370 (Direct)
702.375.7956 (Cell)
702.727.1400 (Main)
702.727.1401 (Fax)
sheri.thome@wilsonelser.com

From: Paul Williams [<mailto:PWilliams@baileykennedy.com>]

Sent: Friday, August 14, 2020 9:44 AM

To: jedwards@cohenjohnson.com; sjohnson@cohenjohnson.com; aedwards@cohenjohnson.com; sgondek@cohenjohnson.com; Thome, Sheri <Sheri.Thome@wilsonelser.com>; Maile, Lani U. <Lani.Maile@wilsonelser.com>; jgarin@lipsonneilson.com; kglad@lipsonneilson.com; snutt@lipsonneilson.com

Cc: Sharon Murnane <SMurnane@baileykennedy.com>

Subject: Rose v. McConnell - Draft Order on Special MTD

[EXTERNAL EMAIL]

Hi all,

Attached is a draft Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP). Please let me know if you have any proposed revisions.

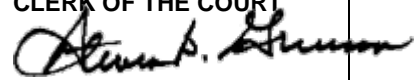
If you do not have any proposed revisions, please confirm that I may affix your electronic signature to the order and submit it to the Court.

Thank you,

Paul C. Williams

Exhibit C

Exhibit C



NEOJ (CIV)
DENNIS L. KENNEDY
Nevada Bar No. 1462
PAUL C. WILLIAMS
Nevada Bar No. 12524
BAILEY ♦ KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
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DKennedy@BaileyKennedy.com
PWilliams@BaileyKennedy.com

*Attorneys for Defendant Sarah Janeen Rose
in Conjunction with the Legal Aid Center of
Southern Nevada Pro Bono Project*

DISTRICT COURT
CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,
Plaintiff,

vs.

REGINA McCONNELL, ESQ., an individual;
McCONNELL LAW LTD., a Nevada limited
liability company; SHELLY BOOTH
COOLEY, ESQ., an individual; THE
COOLEY LAW FIRM, a Nevada Professional
Limited Liability Company; SARAH JANEEN
ROSE, an individual; DOE INDIVIDUALS I
through X and ROE CORPORATIONS XI
through XX,

Defendants.

Case No. A-20-815750-C

Dept. No. 11

**NOTICE OF ENTRY OF
ORDER GRANTING IN PART, AND
DENYING IN PART, DEFENDANT SARAH
JANEEN ROSE'S SPECIAL MOTION TO
DISMISS PURSUANT TO NRS 41.660
(ANTI-SLAPP)**

PLEASE TAKE NOTICE that an Order Granting in Part, and Denying in Part, Defendant
Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP) was

///

///

///

///

///

entered in the above-entitled action on August 27, 2020, a true and correct copy of which is attached hereto.

DATED this 27th day of August, 2020.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

*Attorneys for Defendant Sarah Janeen Rose
in Conjunction with the Legal Aid Center of
Southern Nevada Pro Bono Project*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 27th day of August, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JAMES L. EDWARDS

Email: jedwards@cohenjohnson.com

ADAM C. EDWARDS

COHEN|JOHNSON|PARKER|EDWARDS

Attorneys for Plaintiff

375 East Warm Springs Road, Suite 104

David John Rose

Las Vegas, Nevada 89119

JOSEPH GARIN

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LIPSON NEILSON P.C.

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Attorneys for Defendants McConnell Law

Las Vegas, Nevada 89114

Ltd. and Regina McConnell Esq.

SHERI THOME

Email: sheri.thome@wilsonelser.com

WILSON ELSEER MOSKOWITZ

EDELMAN & DICKER

Attorneys for Defendants Shelly Booth

6689 Las Vegas Boulevard, South Suite 200

Cooley, Esq. and the Cooley Law Firm

Las Vegas, Nevada 89119

/s/ Sharon Murnane

Employee of BAILEY ♦ KENNEDY



ORDR (CIV)

DENNIS L. KENNEDY

Nevada Bar No. 1462

PAUL C. WILLIAMS

Nevada Bar No. 12524

BAILEY ♦ KENNEDY

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Telephone: 702.562.8820

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DKennedy@BaileyKennedy.com

PWilliams@BaileyKennedy.com

*Attorneys for Defendant Sarah Janeen Rose
in Conjunction with the Legal Aid Center of
Southern Nevada Pro Bono Project*

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,

Plaintiff,

vs.

REGINA McCONNELL, ESQ., an individual;
McCONNELL LAW LTD., a Nevada limited
liability company; SHELLY BOOTH COOLEY,
ESQ., an individual; THE COOLEY LAW
FIRM, a Nevada Professional Limited Liability
Company; SARAH JANEEN ROSE, an
individual; DOE INDIVIDUALS I through X
and ROE CORPORATIONS XI through XX,

Defendants.

Case No. A-20-815750-C

Dept. No. 11

**ORDER GRANTING IN PART, AND
DENYING IN PART, DEFENDANT SARAH
JANEEN ROSE'S SPECIAL MOTION TO
DISMISS PURSUANT TO NRS 41.660
(ANTI-SLAPP)**

This matter came before the Court, Department XI (the Honorable Elizabeth Gonzalez presiding), on August 11, 2020 (in chambers) on:

- Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) (hereinafter, the "Special Motion to Dismiss"); and
- Defendants Regina McConnell, Esq. and McConnell Law Ltd.'s Joinder to Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), or, in the

Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) (hereinafter, the “Joinder”).

FINDINGS OF FACT

The Court, having examined the briefs of the parties, the records and documents on file, being fully advised of the premises, and good cause appearing, hereby makes the following Findings of Fact with regard to the Special Motion to Dismiss and the Joinder:

1. Plaintiff David John Rose (“David”) and Defendant Sarah Janeen Rose (“Sarah”) were married on June 17, 2006.

2. On February 22, 2017, David filed a Complaint for Divorce against Sarah; the divorce matter is entitled David John Rose v. Sarah Janeen Rose, Case No. D-17-547250-D (the “Divorce Action”), which is currently pending before the Family Division of the Eighth Judicial District Court (the “Family Court”).

3. On March 23, 2018, Sarah and David, along with their respective counsel, participated in a mediation with the Honorable Rhonda K. Forsberg¹ in an effort to resolve the Divorce Action.

4. At the time of the mediation, David was represented by Defendants Regina McConnell, Esq. and McConnell Law Ltd. (jointly, the “McConnell Defendants”) and Sarah was represented by Defendants Shelly Booth Cooley (“Cooley”) and The Cooley Law Firm (jointly the “Cooley Defendants”).

5. David alleges, and Sarah denies, that during the course of the mediation Sarah requested that David name her as the survivor beneficiary of David’s Public Employees Retirement System (“PERS”) pension. David alleges, and Sarah denies, that David refused to grant survivor benefits to Sarah.

6. The mediation was successful and Judge Forsberg drafted a three-page Memorandum of Understanding (the “MOU”). The MOU states that its purpose was “to memorialize” the parties’ agreement. The MOU stated it included the “material terms” of their

¹ Judge Forsburg was appointed to Department G of the Family Division of the Eighth Judicial District Court after the mediation.

1 agreement and was intended to bind the parties to those material terms. The MOU provided “that
2 counsel for Sarah shall draft a final formal agreement incorporating the terms herein,” and “[t]hat
3 [final formal] agreement shall be ratified by the Court, but shall not merge and shall retain its
4 separate nature as a contract.” The MOU did not address survivor benefits.

5 7. After Sarah and David executed the MOU, Sarah (through her counsel) typed a 39-
6 page Stipulated Decree of Divorce (the “Divorce Decree”), to which the MOU was included as an
7 exhibit. David and his counsel (McConnell) were given a copy of the Divorce Decree for their
8 review. The Divorce Decree provided that David would name Sarah as the irrevocable survivor
9 beneficiary of David’s PERS pension.

10 8. Sarah and David executed the Divorce Decree and Sarah (through her counsel)
11 submitted the Divorce Decree to the judge assigned to the Divorce Action—the Divorce Decree
12 was filed on April 11, 2018.

13 9. On April 25, 2018, David filed (in the Divorce Action) a Motion to Set Aside the
14 Paragraph Regarding Survivor Benefits in the Decree of Divorce Based Upon Mistake (the
15 “Motion to Set Aside”). In essence, David contends that he did not agree to designate Sarah as the
16 survivor beneficiary and the inclusion of that term in the Divorce Decree was a mistake. The
17 Family Court initially granted David’s Motion to Set Aside, removing the award of survivor
18 benefits to Sarah from the Divorce Decree.

19 10. On October 9, 2018, Sarah filed a Motion to Alter or Amend Judgment, or, in the
20 Alternative, for New Trial Pursuant to NRCP 59(a)(7). On January 16, 2019, the Family Court
21 entered an order setting aside its prior order granting David’s Motion to Set Aside and set the
22 matter (including David’s Motion to Set Aside) for an evidentiary hearing.

23 11. The Court began the evidentiary hearing on the Motion to Set Aside (and other
24 motions) on January 27, 2020. The evidentiary hearing has not yet concluded.

25 12. On May 29, 2020, David initiated this action.

26 13. David asserts various causes of action against the McConnell Defendants, alleging
27 they committed legal malpractice by “a. Failing to actively participate in drafting the Decree to
28 ensure the agreed upon terms are properly reflected in the final draft; b. Failing to properly read,

1 review, and object to the Decree that contained unfavorable terms that [David] did not agree to;
2 and c. Advising [David] to sign the Decree that contained unfavorable terms that [David] did not
3 agree to.” (Compl. ¶ 25.)

4 14. David asserts two causes of action against Sarah and the Cooley Defendants.

5 (a) First, David asserts a claim for civil conspiracy against Sarah and the Cooley
6 Defendants, alleging they “acted in concert to intentionally defraud [David] into signing the
7 legally binding Decree of Divorce with terms that were not agreed to” and that they “had no
8 intention of abiding to the agreed upon terms as outlined in the MOU.” (*Id.* ¶¶ 41-42.)

9 (b) Second, David asserts that Sarah and Cooley breached an agreement that
10 Sarah would not receive survivor benefits (which he alleges is reflected in the MOU even
11 though it does not address survivor benefits) by: “a. Drafting the Decree of Divorce, which
12 contained terms that SARAH would be entitled to survivorship benefits under Plaintiff’s
13 PERS account; b. Submitting the Decree of Divorce so that its terms become legally
14 enforceable; c. Seeking to enforce the survivorship benefit from the Decree, despite being
15 contradictory to the agreed upon terms of the MOU.” (*Id.* ¶ 47.)

16 CONCLUSIONS OF LAW

17 The Court, having examined the briefs of the parties, the records and documents on file,
18 being fully advised of the premises, and good cause appearing, hereby makes the following
19 Conclusions of Law with regard to the Special Motion to Dismiss and the Joinder:

20 15. In 1993, the Nevada legislature adopted an anti-SLAPP statute based upon
21 California’s anti-SLAPP statute. *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d
22 1276, 1281 (2009). “A SLAPP lawsuit is characterized as a meritless suit filed primarily to chill
23 the defendant’s exercise of First Amendment rights.” *Id.* at 752, 219 P.3d at 1280 (internal
24 quotation marks omitted). “SLAPP lawsuits abuse the judicial process by chilling, intimidating,
25 and punishing individuals for their involvement in public affairs.” *Id.* at 752, 219 P.3d at 1281.

26 16. Nevada’s anti-SLAPP statute provides that a defendant may file a special motion to
27 dismiss within 60 days after service of the complaint. NRS 41.660(1)-(2). Initially, a defendant
28 filing a special motion to dismiss has the initial burden of demonstrating, by a preponderance of the

evidence, that the claims at issue are “based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.” NRS 41.660(3)(a). Then, if the moving defendant meets her initial burden, the burden shifts to the plaintiff to demonstrate, with “prima facie evidence,” that he has a “probability of prevailing on the claim.” NRS 41.660(3)(c). If the plaintiff fails to meet his burden, the matter must be dismissed and “the dismissal operates as an adjudication on the merits.” NRS 41.660(5).

17. Nevada’s anti-SLAPP statute defines a “[g]ood faith communication in furtherance of the right to free speech in direct connection with an issue of public concern” by four categories of communication. *See* NRS 41.637. One such category protects “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . . **judicial body**” NRS 41.637(3) (emphasis added). To qualify for this category, “the statement must (1) relate to the substantive issues in the litigation and (2) be directed to persons having some interest in the litigation.” *Patin v. Ton Vinh Lee*, 134 Nev. 722, 726, 429 P.3d 1248, 1251 (2018). Finally, the communication must be “truthful or . . . made without knowledge of its falsehood.” NRS 41.637. The Court finds David’s civil conspiracy claim against Sarah concerns conduct and statements at issue related to the ongoing Divorce Action and thus is based on “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . . judicial body.” The Court further finds that Sarah’s conduct and statements “relate to the substantive issues in the litigation” and are “directed to persons having some interest in the litigation,”—specifically, to David and the Family Court. *See Patin*, 134 Nev. at 726, 429 P.3d at 1251. The Court further finds that Sarah’s conduct and alleged statements are not false—even assuming Sarah and David had orally agreed that Sarah would not receive survivor benefits at the mediation, neither their alleged agreement nor the inclusion of the survivor benefits in the Divorce Decree are false statements. *See* NRS 41.637. Accordingly, the Court finds that David’s civil conspiracy claim against Sarah is subject to a special motion to dismiss under Nevada’s anti-SLAPP statute.

18. The Court finds David’s breach of contract claim against Sarah is not based on “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . .

1 judicial body.” Accordingly, the Court finds that David’s breach of contract claim against Sarah is
2 not subject to a special motion to dismiss under Nevada’s anti-SLAPP statute.

3 19. The Court finds David has failed to demonstrate, with “prima facie evidence,” that
4 he has a “probability of prevailing” on his civil conspiracy claim. *See* NRS 41.660(3)(c).

5 (a) First, David’s conspiracy claim fails as matter of law because a client cannot
6 conspire with her legal counsel who is acting within the scope of attorney-client
7 relationship. *See Crossroads Partners v. Utah Crossing, Ltd.*, Nos. 98-15673, 98-15674,
8 1999 U.S. App. LEXIS 22721, at *10 (9th Cir. Sep. 9, 1999) (finding, under Nevada law, a
9 civil conspiracy between a client and a lawyer was barred because “[t]here can be no
10 conspiracy between an agent and its principal when the agent acts only in the agent’s
11 official capacity on behalf of the principal, and not for the agent’s private benefit.”); *Fraidin*
12 *v. Weitzman*, 611 A.2d 1046, 1079 (Md. 1992) (“There can be no conspiracy when an
13 attorney acts within the scope of his employment.”); *Macke Laundry Serv. Ltd. Pshp. v. Jetz*
14 *Serv. Co.*, 931 S.W.2d 166, 176 (Mo. Ct. App. 1996) (“As an agent of the client, an attorney
15 acts as the client’s alter ego and not for the attorney,” and thus “an identity between agent
16 and principal leads to a legal impossibility in the context of conspiracy,” because “[t]wo
17 entities which are not legally distinct cannot conspire with one another.”); *accord Collins v.*
18 *Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983) (“Agents and
19 employees of a corporation cannot conspire with their corporate principal or employer
20 where they act in their official capacities on behalf of the corporation and not as individuals
21 for their individual advantage.”).

22 (b) Second, David’s conspiracy claim fails as a matter of law because David
23 cannot assert fraud based on an alleged term (the survivor benefits) that is contradicted by
24 the unambiguous terms of a written agreement (the Divorce Decree). *See Rd. & Highway*
25 *Builders v. N. Nev. Rebar*, 128 Nev. 384, 390, 284 P.3d 377, 380 (2012).

26 (c) Third, David’s conspiracy claim fails as a matter of law because David
27 cannot assert fraud based solely on Sarah’s alleged failure to perform. *See id.* at 389, 284
28

P.3d at 380 (“[T]here is no inference of a fraudulent intent not to perform from the mere fact that a promise made is subsequently not performed.”).

ORDER

Based on the foregoing Findings and good cause appearing,

IT IS HEREBY ORDERED that the Special Motion to Dismiss is GRANTED pursuant to NRS 41.660 (anti-SLAPP) as to David’s civil conspiracy claim, which is hereby DISMISSED with prejudice.

IT IS FURTHER ORDERED that the Special Motion to Dismiss and Joinder are DENIED as to David’s breach of contract claim against Sarah.

IT IS FURTHER ORDERED that Sarah’s motions to dismiss under NRCP 12(b)(1) and NRCP 12(b)(5), sought in the alternative, are DENIED without prejudice to renewal in an NRCP 12(b) response.

DATED this 27th day of August, 2020.



THE HONORABLE ELIZABETH GONZALEZ

Respectfully Submitted By:

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

Attorneys for Defendant Sarah Janeen Rose

~~Approved as to Form and Content By:~~

~~COHEN | JOHNSON | PARKER | EDWARDS~~

By: _____

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~~375 East Warm Springs Road, Suite 104~~

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By: /s/ Sheri Thome

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Approved as to Form and Content By:

LIPSON NEILSON P.C.

By: /s/ Joseph Garin

JOSEPH GARIN

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89114

Attorneys for Defendants McConnell Law Ltd. and Regina McConnell Esq.

Paul Williams

From: Paul Williams
Sent: Friday, August 21, 2020 2:11 PM
To: 'jedwards@cohenjohnson.com'; 'aedwards@cohenjohnson.com'
Cc: Sharon Murnane; 'Kim Glad'; 'Thome, Sheri'; 'Maile, Lani U.'; 'Joe Garin'; 'Susana Nutt'; 'sjohnson@cohenjohnson.com'; 'sgondek@cohenjohnson.com'
Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Hi James and Adam,

Having not heard from you, we will submit the draft order to the Court (it is due today), using a strike-through on your signature block to indicate you have not approved as to form or content.

Thank you,

Paul C. Williams
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
(702) 562-8820 (Main)
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From: Paul Williams
Sent: Wednesday, August 19, 2020 4:40 PM
To: jedwards@cohenjohnson.com; aedwards@cohenjohnson.com
Cc: Sharon Murnane <SMurnane@baileykennedy.com>; 'Kim Glad' <KGLad@lipsonneilson.com>; Thome, Sheri <Sheri.Thome@wilsonelser.com>; Maile, Lani U. <Lani.Maile@wilsonelser.com>; Joe Garin <JGarin@lipsonneilson.com>; Susana Nutt <SNutt@lipsonneilson.com>; sjohnson@cohenjohnson.com; sgondek@cohenjohnson.com
Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Hi James and Adam,

Following up on the draft order. If you do not have any proposed revisions, please confirm that I may affix your electronic signature to the order and submit it to the Court.

Thank you,

Paul C. Williams

Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
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From: Kim Glad <KGlad@lipsonneilson.com>
Sent: Monday, August 17, 2020 10:01 AM
To: Thome, Sheri <Sheri.Thome@wilsonelser.com>; Paul Williams <PWilliams@baileykennedy.com>;
jedwards@cohenjohnson.com; sjohnson@cohenjohnson.com; aedwards@cohenjohnson.com;
sgondek@cohenjohnson.com; Maile, Lani U. <Lani.Maile@wilsonelser.com>; Joe Garin <JGarin@lipsonneilson.com>;
Susana Nutt <SNutt@lipsonneilson.com>
Cc: Sharon Murnane <SMurnane@baileykennedy.com>
Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Dear Mr. Williams,

On behalf of Joe Garin, please be advised that you may affix his electronic signature to the Proposed Order.

Should you have any questions, please feel free to contact Mr. Garin directly.

Sincerely,
Kim



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From: Thome, Sheri <Sheri.Thome@wilsonelser.com>

Sent: Friday, August 14, 2020 2:25 PM

To: Paul Williams <PWilliams@baileykennedy.com>; jedwards@cohenjohnson.com; sjohnson@cohenjohnson.com; aedwards@cohenjohnson.com; sgondek@cohenjohnson.com; Maile, Lani U. <Lani.Maile@wilsonelser.com>; Joe Garin <JGarin@lipsonneilson.com>; Kim Glad <KGlad@lipsonneilson.com>; Susana Nutt <SNutt@lipsonneilson.com>

Cc: Sharon Murnane <SMurnane@baileykennedy.com>

Subject: RE: Rose v. McConnell - Draft Order on Special MTD

Paul,

You may affix my electronic signature. Thank you.

Sheri Thome
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From: Paul Williams [<mailto:PWilliams@baileykennedy.com>]

Sent: Friday, August 14, 2020 9:44 AM

To: jedwards@cohenjohnson.com; sjohnson@cohenjohnson.com; aedwards@cohenjohnson.com; sgondek@cohenjohnson.com; Thome, Sheri <Sheri.Thome@wilsonelser.com>; Maile, Lani U. <Lani.Maile@wilsonelser.com>; jgarin@lipsonneilson.com; kglad@lipsonneilson.com; snutt@lipsonneilson.com

Cc: Sharon Murnane <SMurnane@baileykennedy.com>

Subject: Rose v. McConnell - Draft Order on Special MTD

[EXTERNAL EMAIL]

Hi all,

Attached is a draft Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP). Please let me know if you have any proposed revisions.

If you do not have any proposed revisions, please confirm that I may affix your electronic signature to the order and submit it to the Court.

Thank you,

Paul C. Williams