

Case No. 81859

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 07 2021 05:52 p.m.

SARAH JANEEN ROSE, an individual,

Elizabeth A. Brown
Clerk of Supreme Court

Appellant,

vs.

DAVID JOHN ROSE, an individual,

Respondent.

District Court Case No. A-20-815750-C, Department XI

**JOINT APPENDIX
VOLUME I OF II**

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 Appellant
In conjunction with Legal Aid Center
of Southern Nevada Pro Bono Project*

H. STAN JOHNSON
Nevada Bar No. 265
RYAN D. JOHNSON
Nevada Bar No. 14724
COHEN|JOHNSON|PARKER|EDWARDS
375 East Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
Telephone: 702.823.3500
Facsimile: 702.823.3400
sjohnson@cohenjohnson.com
rjohnson@cohenjohnson.com

Attorneys for Respondent

JOINT APPENDIX

VOLUME I OF II

TABLE OF CONTENTS

Document Title	Date	Vol. No.	Tab No.	Page Nos.
Complaint	5/29/2020	I	1	001-089
Affidavit of Service – Sarah Janeen Rose	6/10/2020	I	2	090
Waiver of Service of Summons Under Rule 4.1 of the Nevada Rules of Civil Procedure and Acceptance of Service	7/01/2020	I	3	091-092
Defendants McConnell Law Ltd., and Regina McConnell, Esq.’s Answer and Affirmative Defenses to Plaintiff David John Rose’s Third Amended Complaint	7/02/2020	I	4	093-100
Statement of Legal Aid Representation	7/06/2020	I	5	102
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)	7/06/2020	I	6	103-128
Notice of Hearing Re: 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)	7/08/2020	I	7	129

Document Title	Date	Vol. No.	Tab No.	Page Nos.
Defendants Regina McConnell, Esq. and McConnell Law Ltd.'s Joinder to 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)	7/13/2020	I	8	130-225
Opposition to 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) and Opposition to Defendants Regina McConnell, Esq. and McConnell Law Ltd.'s Joinder to 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)	7/29/2020	I	9	226-236
Declaration of James L. Edwards Re: Opposition to 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) and Opposition to Defendants Regina McConnell, Esq. and McConnell Law Ltd.'s Joinder to 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)	7/29/2020	I	10	237-238

JOINT APPENDIX

INDEX

Document Title	Date	Vol. No.	Tab No.	Page Nos.
Affidavit of Service – Sarah Janeen Rose	6/10/2020	I	2	090
Commissioner’s Decision on Request for Exemption	8/07/2020	II	13	331-332
Complaint	5/29/2020	I	1	001-089
Declaration of James L. Edwards Re: Opposition to 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) and Opposition to Defendants Regina McConnell, Esq. and McConnell Law Ltd.’s Joinder to 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)	7/29/2020	I	10	237-238
Defendant Sarah Janeen Rose’s Case Appeal Statement	9/25/2020	II	20	386-393
Defendant Sarah Janeen Rose’s Motion for Attorney’s Fees	9/10/2020	II	18	365-380
Defendant Sarah Janeen Rose’s Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)	9/10/2020	II	17	351-364
Defendant Sarah Janeen Rose’s Notice of Appeal	9/25/2020	II	19	381-382

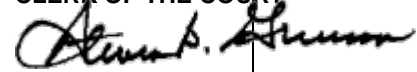
Document Title	Date	Vol. No.	Tab No.	Page Nos.
Defendant Sarah Janeen Rose's Reply in Support of her Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)	10/22/2020	II	27	432-439
Defendant Sarah Janeen Rose's Reply in Support of her Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)	8/04/2020	II	12	318-330
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)	7/06/2020	I	6	103-128
Defendants McConnell Law Ltd., and Regina McConnell, Esq.'s Answer and Affirmative Defenses to Plaintiff David John Rose's Third Amended Complaint	7/02/2020	I	4	093-100
Defendants Regina McConnell, Esq. and McConnell Law Ltd.'s Joinder to 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)	7/13/2020	I	8	130-225

Document Title	Date	Vol. No.	Tab No.	Page Nos.
Exhibits to Opposition to 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) and Opposition to Defendants Regina McConnell, Esq. and McConnell Law Ltd.'s Joinder to 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)	7/29/2020	II	11	239-317
Minute Order Re: All Pending Motions	8/11/2020	II	14	333-334
Minute Order Re: Defendant Sarah Janeen Rose's Motion for Attorney's Fees	10/15/2020	II	26	431
Minute Order Re: Status Check: Family Court Proceedings	4/30/2021	II	33	463
Notice of Entry of Order Granting Defendant Sarah Janeen Rose's Motion for Attorney's Fees	10/27/2020	II	29	445-452
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)	8/27/2020	II	16	342-350
Notice of Entry of Order Re: Defendants Shelly Booth Cooley and The Cooley Law Firm's anti-SLAPP Motion and Motion to Dismiss Under NRCP 12(b)(5)	10/05/2020	II	24	418-422

Document Title	Date	Vol. No.	Tab No.	Page Nos.
Notice of Entry of Order: (1) Denying Defendant Sarah Janeen Rose's Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5); and (2) Staying Matter	12/14/2020	II	31	455-459
Notice of Hearing Re: 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)	7/08/2020	I	7	129
Opposition to Defendant Sarah Janeen Rose's Motion for Attorney's Fees	9/28/2020	II	21	394-400
Opposition to Defendant Sarah Janeen Rose's Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)	9/28/2020	II	22	401-414
Opposition to 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) and Opposition to Defendants Regina McConnell, Esq. and McConnell Law Ltd.'s Joinder to 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)	7/29/2020	I	9	226-236
Order Granting Defendant Sarah Janeen Rose's Motion for Attorney's Fees	10/26/2020	II	28	440-444
Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP)	8/27/2020	II	15	335-341

Document Title	Date	Vol. No.	Tab No.	Page Nos.
Order Re: Defendants Shelly Booth Cooley and The Cooley Law Firm's anti-SLAPP Motion and Motion to Dismiss Under NRCP 12(b)(5)	10/05/2020	II	23	415-417
Order: (1) Denying Defendant Sarah Janeen Rose's Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5); and (2) Staying Matter	12/10/2020	II	30	453-454
Reply in Support of Defendant Sarah Janeen Rose's Motion for Attorney's Fees	10/9/2020	II	25	423-430
Statement of Legal Aid Representation	7/06/2020	I	5	102
Status Report	4/29/2021	II	32	460-462
Waiver of Service of Summons Under Rule 4.1 of the Nevada Rules of Civil Procedure and Acceptance of Service	7/01/2020	I	3	091-092

TAB 1



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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 SHELLEY 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,

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 based upon a selection of Option 2 being made at the time of retirement so as to name Sarah as the irrevocable survivor beneficiary. This was not included in the Memorandum because it was not agreed upon by the parties at the time of the mediation. Therefore, David requests that this paragraph be set aside as it was not agreed upon and it was mistakenly included and not noticed upon signing. Page 3, lines 27 – 28 and page 4, lines 1 – 5.

* * *

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

III.

FIRST CLAIM FOR RELIEF

(negligence)

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

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

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

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

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

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

COMPLAINT - 5

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.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

///
///
///

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.
23

24 ///

25 ///

26 ///
27
28

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.

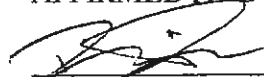
6. The parties shall follow and be subject to Department I's Behavior Order.

7. Sarah is waiving her community waste claim.

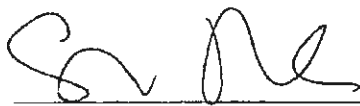
8. Each party shall be responsible for their own respective attorney's fees.

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:



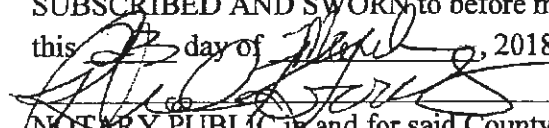
REGINA M. McConnell, ESQ.
Counsel for David Rose



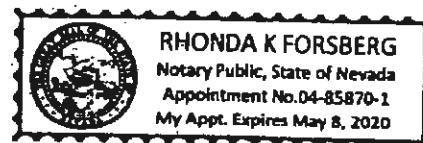
SHELLY BOOTH COOLEY, ESQ.
Counsel for Sarah Rose

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

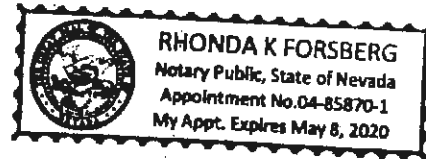


Exhibit 2



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
the claim for treatment being denied by the
insurance company in whole or in part will result
in the amount which would have been paid by the
insurance policy being paid by the insuring party.

16 e. Reimbursement For Out-of-Pocket Expenses: A
17 party who receives a written request for
18 contribution for an out-of-pocket health care
19 expense incurred by the other party must pay his
20 or her share of the out-of-pocket expense to the
21 paying party within thirty (30) days of receipt of
22 the written request for contribution. The court
23 encourages as much informal written
24 documentation as possible such as a handwritten
25 note with copies of the bills and proof of payment
26 attached. The requesting party shall make a copy
27 of all papers submitted to the other party and
28 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 Division of the District Attorney has jurisdiction over the case.
10
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 **1. Awarded to Plaintiff, DAVID JOHN ROSE:**

17
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
25 approximate \$55,585.95 (Fifty-five Thousand Five Hundred
26 Eighty-Five Dollars and Ninety-Five Cents) from the proceeds
27
28 from the sale of the Marital Residence located at 7705 Young

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
27
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
26
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
24
25
26
27
28

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.

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

26 d) Any and all debts incurred solely by DAVID JOHN ROSE
27 as of the parties separation, which occurred on 02/21/2017.
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
24
25
26
27
28

...

...

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**

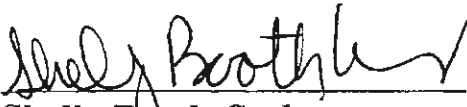
14 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
15 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
16 expressly agree that this Decree of Divorce constitutes a just and equal
17 distribution of the community assets and liabilities as they are known
18 today and amply addresses the contingencies 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 ...

27 ..

28 ...

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

1	when school recesses for Winter Break (or 3:00		
2	p.m. if the children are not in school) and continue		
3	until the midpoint of Winter Break. If the midpoint		
4	falls on December 25 th , the parties shall exchange		
5	the children on December 26 th at 10:00 a.m. The		
6	second period shall commence on the midpoint of		
7	Winter Break at 10:00 a.m. and continues until		
8	school is scheduled to resume (or 9:00 a.m. if the		
9	children are not in school).		
10	<u>First Period/Christmas Day (December 25th)</u>	Mother	Father
11	<u>Second Period/New Year's Day (January 1st)</u>	Father	Mother
12	<u>Children's Birthdays:</u> The children's birthdays	Mother	Father
13	shall be defined as beginning on the day of the		
14	birthday at 9:00 a.m. and concludes the following		
15	day at 9:00 a.m.		
16	<u>Parents' Birthdays:</u> The children shall reside with		
17	each parent on his/her birthday on the individual		
18	day at 9:00 a.m. and concludes the morning		
19	following the individual day at 9:00 a.m. Father's		
20	birthday is May 26 th . Mother's birthday is August		
21	17 th .		
22	<u>Vacations:</u> Each parent shall be entitled to 14 days		
23	of vacation time annually, upon 30 days written		
24	notice to the other parent. In the event that the		
25	parents' schedule conflicting vacations with the		
26	minor child, Mother's plans shall be given priority		
27	in even-numbered years and Father's plans shall be		
28	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

...

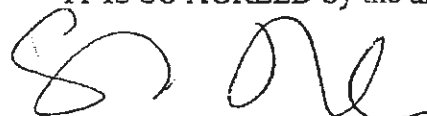
...

...

...

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.

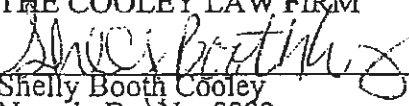
4 IT IS SO AGREED by the undersigned this ____ day of July, 2017.

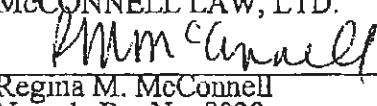
5
6 
7 SARAH ROSE
Defendant

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

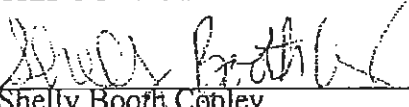
26
27 IT IS SO ORDERED this ____ day of OCT 25 2017, 2017.

28 
District Court Judge 

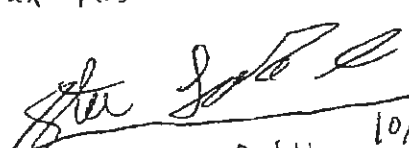
Respectfully Submitted:

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

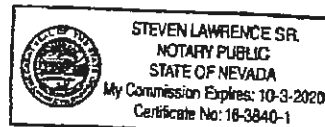


Exhibit “B”

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.

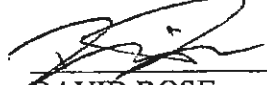
6. The parties shall follow and be subject to Department I's Behavior Order.

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

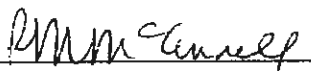


DAVID ROSE
Dated: 3-23-18

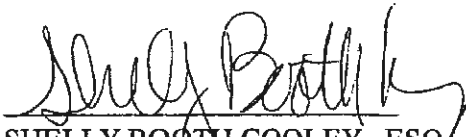


SARAH ROSE
Dated: 03/23/2018

Approved as to Form and Content:



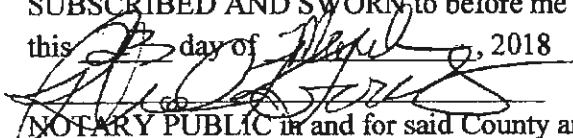
REGINA M. McConnell, ESQ.
Counsel for David Rose



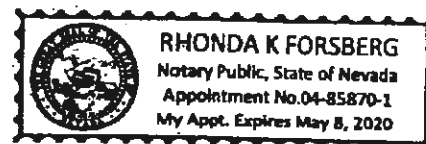
SHELLY BOOTH COOLEY, ESQ.
Counsel for Sarah Rose

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.

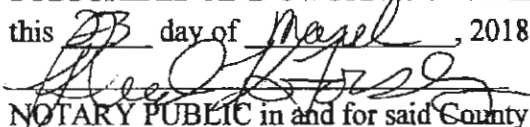
SUBSCRIBED AND SWORN to before me
this 23rd day of April, 2018


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

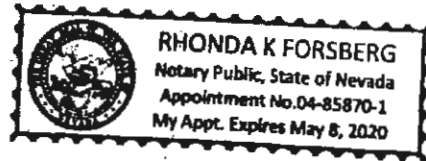


Exhibit “C”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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
15

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.
26
27
28

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 10. Neither party shall interfere with the other party's contact with the
17 minor children, including but not limited to telephone, email, social networking
18 contacts, etc.; where telephone/video conferencing is part of your parent contact
19 you may not take a smart phone or iPad from a child as a means of discipline
20 when a child uses this technology to contact the non-residential parent. You must
21 maintain a device accessible to the child(ren) charged or with accessible charger
22 at all times, absent a Court Order otherwise.
23
24
25
26
27
28

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.
25
26
27
28

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 **CHERYL B. MOSS**
18 **DISTRICT COURT JUDGE**
19 **FAMILY DIVISION DEPT. I**
20
21
22
23
24
25
26
27
28

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.

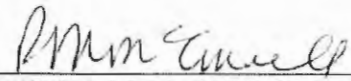
///

///

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**

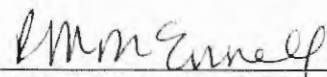
13 TO: SARAH ROSE, Defendant; and

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
28

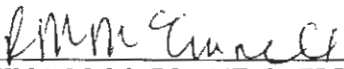
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

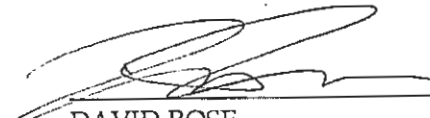
DECLARATION OF DAVID ROSE

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

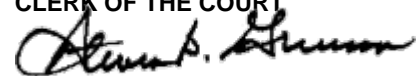
Signature of Party or Preparer *pmcneel*

TAB 2

AOS

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

Electronically Filed
6/10/2020 11:12 AM
Steven D. Grierson
CLERK OF THE COURT



DAVID JOHN ROSE

Plaintiff

VS

REGINA MCCONNELL, ESQ.; ET AL

Defendant

CASE NO: A-20-815750-C

HEARING DATE/TIME:

DEPT NO: 11

AFFIDAVIT OF SERVICE

SHEA BYERS being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received 1 copy(ies) of the SUMMONS, COMPLAINT, on the 4th day of June, 2020 and served the same on the 6th day of June, 2020, at 20:10 by:

delivering and leaving a copy with the servee SARAH JANEEN ROSE at (address) 269 GARDEN TRELLIS CT,
LAS VEGAS NV 89148

Pursuant to NRS 53.045

I declare under penalty of perjury under the law of the
State of Nevada that the foregoing is true and correct.

EXECUTED this 06 day of Jun, 2020.



**SHEA BYERS
R-078843**

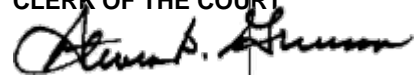
Junes Legal Service, Inc. - 630 South 10th Street - Suite B - Las Vegas NV 89101 - 702.579.6300 - fax 702.259.6249 - Process License #1068

EP238492

Copyright © 2018 Junes Legal Service, Inc. and Outside The Box

090

TAB 3



1 **WAIV**
2 **COHEN JOHNSON PARKER EDWARDS**
3 JAMES L. EDWARDS, ESQ.
Nevada Bar No. 4256
4 ADAM C. EDWARDS, ESQ.
Nevada Bar No. 15405
5 375 E. Warm Springs Road, Suite 104
Las Vegas, NV 89119
6 Phone: (702) 823-3500
Fax: (702) 823-3400
Attorneys for Plaintiff

7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 DAVID JOHN ROSE, an individual,
Plaintiff,

Case No.: A-20-815750-C

Dept No.: XI

10 vs.

11 REGINA MCCONNELL, ESQ., an individual;
12 MCCONNELL LAW, LTD., a Nevada law
firm; SHELLY BOOTH COOLEY, ESQ., an
13 individual; THE COOLEY LAW FIRM, a
Nevada law firm; SARAH JANEEN ROSE, an
14 individual; DOE INDIVIDUALS I through X
and ROE CORPORATIONS XI through XX,
Defendants

**WAIVER OF SERVICE OF SUMMONS
UNDER RULE 4.1 OF THE NEVADA
RULES OF CIVIL PROCEDURE
AND ACCEPTANCE OF SERVICE**

15 To Cohen|Johnson|Parker|Edwards:

16 I have received your request to waive service of a summons in this lawsuit along with a
17 copy of the complaint, two copies of this waiver form, and a prepaid means of returning one
18 signed copy of the form to you.

19 I, or the entity I represent, agree to save the expense of serving a summons and
20 complaint in this lawsuit.

21 I understand that I, or the entity I represent, will keep all defenses or objections to the
22 lawsuit, the court's jurisdiction, and the venue of the lawsuit, but that I waive any objections to
23 the absence of a summons or of service.

1 I also understand that I, or the entity I represent, must file and serve an answer or a
2 motion under Rule 12 of the Nevada Rules of Civil Procedure within 60 days from
3 6/24/2020, the date when this request was sent (or 90 days if it was sent outside
4 the United States). If I fail to do so, a default judgment will be entered against me or the entity I
5 represent.

6 Date: 6/25/2020

8 WILSON ELSER MOSKOWITZ, et al

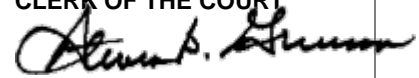
9 By: Sheri Thome
10 SHERI THOME, ESQ.
11 Nevada State Bar No. 8657
12 6689 Las Vegas Blvd South, Ste. 200
13 Las Vegas, NV 89119
14 (702) 727-1400
15 sheri.thome@wilsonelser.com
16 Attorneys for Shelly Booth Cooley &
17 The Cooley Law Firm

18 Prepared by:

19 **COHEN|JOHNSON|PARKER|EDWARDS**

20 By: /s/ James L. Edwards
21 JAMES L. EDWARDS, ESQ.
22 Nevada Bar No. 4256
23 ADAM C. EDWARDS, ESQ.
24 Nevada Bar No. 15405
25 375 E. Warm Springs Road, Suite 104
26 Las Vegas, NV 89119
27 (702) 823-3500
28 Fax: (702) 823-3400
29 *Attorneys for Plaintiff*

TAB 4



LIPSON NEILSON P.C.
JOSEPH P. GARIN, ESQ.
Nevada Bar No. 6653
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500
(702) 382-1512 - fax
jgarin@lipsonneilson.com

*Attorneys for Defendants
McConnell Law Ltd. & Regina McConnell, Esq.*

DISTRICT COURT
CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,
Plaintiff,

v.

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

**DEFENDANTS MCCONNELL LAW
LTD., AND REGINA MCCONNELL,
ESQ.'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF DAVID JOHN ROSE'S
THIRD AMENDED COMPLAINT**

Defendants McConnell Law Ltd. and Regina McConnell, Esq. (collectively
"Answering Defendants"), by and through their counsel, LIPSON NEILSON P.C., hereby
hereby answer Plaintiff's Third Amended Complaint as follows:

I.

INTRODUCTION

1. As to paragraphs 1, 4, 5, 6 and 7, Answering Defendants are without
knowledge or information sufficient to form a belief of the truth of the allegations
contained therein and, therefore, deny.

2. As to paragraphs 2 and 3, Answering Defendants admit the allegations
contained therein.

1 Answering Defendants are without knowledge or information sufficient to form a belief of
2 the truth of the remainder of the allegations contained therein and, therefore, deny.

3 17. As to paragraphs 37, 37a, 37b, 38 and 39, Answering Defendants deny
4 the allegations contained therein.

5 **VI.**

6 **FOURTH CLAIM FOR RELIEF**

7 **(Civil Conspiracy)**

8 18. As to paragraph 40, Answering Defendants incorporate their answers to
9 paragraphs 1 through 39 as if fully set forth herein.

10 19. As to paragraphs 41, 42 and 43, Answering Defendants deny the
11 allegations contained therein.

12 **VI.**

13 **FIRTH CLAIM FOR RELIEF**

14 **(Breach of Contract)**

15 20. As to paragraph 44, Answering Defendants incorporate their answers to
16 paragraphs 1 through 43 as if fully set forth herein.

17 21. As to paragraphs 45, 46, 46a, 46b, 46c, 47 and 48, Answering Defendants
18 are without knowledge or information sufficient to form a belief of the truth of the
19 remainder of the allegations contained therein and, therefore, deny.

20 **AFFIRMATIVE DEFENSES**

21 As and for their Affirmative Defenses herein, Answering Defendants allege as
22 follows:

23 **FIRST AFFIRMATIVE DEFENSE**

24 Plaintiff fails to state a claim against Answering Defendants upon which relief can
25 be granted.

26 **SECOND AFFIRMATIVE DEFENSE**

27 Plaintiff has not suffered a cognizable legal injury.

28 \\\

THIRD AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate her damages, if any.

FOURTH AFFIRMATIVE DEFENSE

Answering Defendants state that Plaintiff's claims are barred by the Statute of Frauds, Laches, Waiver, and/or Statute of Limitations.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the Doctrine of Unclean Hands.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's causes of action for breach of fiduciary duty are duplicative and subject to a legal malpractice cause of action's statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is estopped from pursuing her claims as a result of her own conduct, and/or misconduct.

EIGHTH AFFIRMATIVE DEFENSE

As to all causes of action alleged, Answering Defendants allege that by reason of the acts and omissions of Plaintiff, Plaintiff has waived any entitlement to any recovery, for any breach of any duty, or for any other cause.

NINTH AFFIRMATIVE DEFENSE

Any conduct and/or actions of Answering Defendants were engaged in good faith and for legitimate business reasons.

TENTH AFFIRMATIVE DEFENSE

If Plaintiff has sustained injuries and damages, it has been the result of Plaintiff's negligence and/or failure to properly defend the underlying action and/or inappropriate behavior.

ELEVENTH AFFIRMATIVE DEFENSE

Answering Defendants assert as an affirmative defense that Plaintiff's alleged injuries and damages may have been caused or contributed to by the acts or omissions

1 of Plaintiff and/or other persons or parties, thereby eliminating or reducing liability of the
2 Answering Defendants under comparative fault principles.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 Attorney's fees in prosecuting this action are barred and may not be recovered
5 under the "American" rule.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 Plaintiff failed to comply with the written terms of the retainer agreement.

8 **FOURTEENTH AFFIRMATIVE DEFENSE**

9 Answering Defendants performed no acts or omissions that would warrant the
10 imposition of any damages.

11 **FIFTEENTH AFFIRMATIVE DEFENSE**

12 That it has been necessary for Answering Defendants to employ the services of
13 an attorney to defend this action and a reasonable sum should be allowed as and for
14 Answering Defendants' attorney's fees, together with their costs expended in this action.

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

16 Any recovery by Plaintiff must be offset by the unpaid legal fees and costs still
17 due and owing to Answering Defendants.

18 **SEVENTEENTH AFFIRMATIVE DEFENSE**

19 Plaintiff is barred from asserting any claim against Answering Defendants
20 because the alleged injuries and damages, if any, were the result of the intervening,
21 superseding conduct of others, over whom Answering Defendants had no control.

22 **EIGHTEENTH AFFIRMATIVE DEFENSE**

23 Plaintiff's claims are barred because she breached her duty to act in good faith.

24 **NINETEENTH AFFIRMATIVE DEFENSE**

25 Answering Defendants were not a proximate cause or legal cause of Plaintiff's
26 injuries or damages, if any.

27 \\\

28 \\\

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff’s injuries and damages, if any, were the result of Plaintiff’s negligence, comparative negligence, and misconduct.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Answering Defendants committed no wrongful or negligent acts.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff’s claims relating to the conduct of the underlying matters should be dismissed for the reason that any alleged failure and/or omission of Answering Defendants did not constitute a “but for” cause in fact or a “proximate cause of any alleged injury or damage to Plaintiff. Further, to the extent that there are intervening and superseding causes, Plaintiff’s claims are barred.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff’s claims are reduced, modified, and/or barred by the doctrine of collateral estoppel and/or issue preclusion.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff’s claim of negligence is without legal merit for the reason that Answering Defendants, at all times, exercised the reasonable skill, care, and diligence usually exercised by lawyers and otherwise conducted themselves with honesty, good faith, integrity, and fidelity to Plaintiff at all time during their representation of Plaintiff in the underlying matter.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 8 and 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer to Plaintiff’s Third Amended Complaint, and the Answering Defendants reserve the right to amend their Answer to allege additional affirmative defenses as subsequent investigation warrants.

\\\

\\\

1 WHEREFORE, Answering Defendants pray for judgment as follows:

2 1. That the Court find no cause of action in favor of Plaintiff and Plaintiff
3 takes nothing by virtue of the Third Amended Complaint;

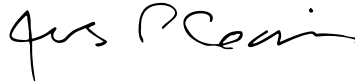
4 2. That Plaintiff's Third Amended Complaint be dismissed with prejudice and
5 that Answering Defendants be dismissed from this action;

6 3. That the Court award Answering Defendants reasonable attorneys' fees
7 and costs of suit; and,

8 4. For such other and further relief as the Court may deem just and proper.

9 DATED this 2nd day of July, 2020.

10 LIPSON NEILSON P.C.

11 

12 By:

13 JOSEPH P. GARIN, ESQ.
14 Nevada Bar No. 6653
15 9900 Covington Cross Drive, Suite 120
16 Las Vegas, Nevada 89144

17 *Attorneys for Defendants*
18 *McConnell Law Ltd. & Regina McConnell, Esq.*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 2nd day of July, 2020, I electronically served the foregoing **DEFENDANTS MCCONNELL LAW LTD., AND REGINA MCCONNELL, ESQ.’S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF DAVID JOHN ROSE’S THIRD AMENDED COMPLAINT** through the Clerk’s Office using the E-File & ServeNV system for transmittal to the following parties:

James L. Edwards, Esq. Adam C. Edwards, Esq. COHEN JOHNSON PARKER EDWARDS 375 E. Warm Springs Rd, Suite 104 Las Vegas, NV 89119 jedwards@cohenjohnson.com aedwards@cohenjohnson.com	
---	--

Attorneys for Plaintiff

/s/ Kim Glad

An Employee of LIPSON NEILSON P.C.

TAB 5

SOLA

Dennis L. Kennedy, Esq.

Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas Nevada 89148

Tel: (702) 562-8820

Fax: (702) 562-8821

dkennedy@baileykennedy.com

Attorney for the Defendant

In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

Electronically Filed

7/6/2020 4:52 PM

Steven D. Grierson

CLERK OF THE COURT



DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID ROSE,

Plaintiff,

vs.

SARAH ROSE,

Defendant.

CASE NO. A-20-815750-C

DEPT. 11

**STATEMENT OF LEGAL AID
REPRESENTATION
(PURSUANT TO NRS 12.015)**

Party Filing Statement:

☐ Plaintiff/Petitioner

☒ Defendant/Respondent

STATEMENT

SARAH ROSE, has qualified and has been accepted for placement as a Pro Bono client or as a direct client of LEGAL AID CENTER OF SOUTHERN NEVADA, a nonprofit organization providing free legal assistance to indigents, and is entitled to pursue or defend this action without costs, including filing fees and fees for service of writ, process, pleading or paper without charge, as set forth in NRS 12.015.

Dated: June 16, 2020.

BARBARA BUCKLEY, ESQ.

Legal Aid Center of Southern Nevada Preparer
Nevada Bar No.: 3918

/s/ Barbara E. Buckley

Signature of Legal Aid Center of Southern Nevada Preparer

Submitted by:

Dennis L. Kennedy, Esq.

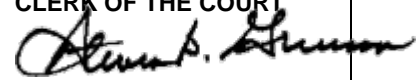
Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas Nevada 89148

Tel: (702) 562-8820

Fax: (702) 562-8821

dkennedy@baileykennedy.com

TAB 6



MDSM (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

**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)**

(Hearing Requested)

Defendant Sarah Janeen Rose ("Sarah") moves to dismiss the claims asserted against her by Plaintiff David John Rose ("David") pursuant to NRS 41.660 (the "Motion"). As detailed below, David's claims against Sarah 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," and are thus subject to a special motion to dismiss under Nevada's Anti-SLAPP statute. *See* NRS 41.660(3)(a). As detailed below, David's claims are based on Sarah's statements from a divorce action 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

1 Court (the “Family Court”). Claims arising from settlement negotiations, drafting of settlement
2 agreements, and submission of settlement agreements are subject to Nevada’s Anti-SLAPP statute
3 and thus the burden shifts to David to demonstrate, with “prima facie evidence,” that he has a
4 “probability of prevailing on [his] claim[s]” which he cannot do. *See* NRS 41.660(3)(c). In the
5 alternative, Sarah moves to dismiss David’s claims pursuant to NRCP 12(b)(1) because this Court
6 lacks subject-matter jurisdiction and under NRCP 12(b)(5) because his claims fail as pled.

7 This Motion is made and based upon the papers and pleadings on file; the following
8 Memorandum of Points and Authorities; the exhibits attached hereto; and any oral argument as may
9 be heard by the Court.

10 DATED this 6th day of July, 2020.

11 BAILEY ♦ KENNEDY

12 By: /s/ Paul C. Williams

13 DENNIS L. KENNEDY

14 PAUL C. WILLIAMS

15 *Attorneys for Defendant Sarah Janeen Rose*
16 *in Conjunction with the Legal Aid Center of*
17 *Southern Nevada Pro Bono Project*
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

David’s strategy in filing this premature lawsuit against Sarah is transparent. David wants to create leverage against Sarah in their *pending* Divorce Action and to intimidate Sarah’s former counsel Shelly Booth Cooley, Esq. (“Cooley”), who is anticipated to testify in an evidentiary hearing in the Divorce Action currently scheduled for July 22, 2020. The purpose of the evidentiary hearing is to address David’s efforts to set aside a term contained in a Stipulated Decree of Divorce (the “Divorce Decree”) providing Sarah with survivor benefits under David’s Public Employees Retirement System (“PERS”) pension—i.e. the basis of David’s claims against Sarah in this action. If David obtains the relief he seeks in the Divorce Matter, his claims against Sarah are moot. David’s decision to file this unripe lawsuit at this time is an unmistakable attempt to wrongfully pressure Sarah into agreeing to his desired result in the Divorce Action and to intimidate a witness (Cooley). Nevada law does not tolerate such misconduct.

In 1993, the Nevada legislature enacted an anti-SLAPP statute to protect against such abusive litigation. As explained below, David’s claims 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,”¹ making them subject to a special motion to dismiss under Nevada’s anti-SLAPP statute. David’s claims are based on statements made in the course of a judicial proceeding (the Divorce Matter); specifically: (1) an alleged oral agreement made during mediation; (2) a Memorandum of Understanding (“MOU”) signed by the parties; and (3) Sarah’s drafting and submission (through her counsel) of the Divorce Decree to the Family Court. Indeed, the California Supreme Court has interpreted its anti-SLAPP statute—a statute upon which Nevada’s anti-SLAPP statute is modeled—to apply to claims such as breach of contract and fraud arising from the negotiation and execution of settlement documents.

Because David’s claims are subject to a special motion to dismiss under Nevada’s anti-SLAPP statute, the burden of proof shifts to David to demonstrate, with prima facie evidence, a

¹ NRS 41.660(3)(a).

1 probability of prevailing on his claims. David cannot meet this burden. Even accepting David's
2 allegations as true, his claims fail as a matter of Nevada law.

3 First, this Court lacks subject-matter jurisdiction to address David's claims. The Family
4 Court has exclusive jurisdiction over divorce matters. The Nevada Supreme Court has repeatedly
5 held that where a divorce decree does not directly provide for the survival of a pre-decree
6 agreement merged into the decree (like the MOU), that pre-decree agreement is destroyed and the
7 parties' remedies are limited to those available on the decree itself (e.g., a motion to set aside the
8 decree). Stated differently, David cannot collaterally attack the Divorce Decree with claims for
9 fraud and breach of contract because the MOU and any alleged oral agreement were unequivocally
10 merged into the Divorce Decree. Accordingly, this Court lacks subject-matter jurisdiction to
11 address the Divorce Decree which is pending in the Family Court.

12 Second, even assuming this Court had subject-matter jurisdiction, David's claims fail as a
13 matter of law. Specifically:

- 14 ➤ David's claims are unripe because they are contingent upon the outcome of the Divorce
15 Matter, which remains pending.
- 16 ➤ David's conspiracy claim fails because Sarah cannot conspire with Cooley—who was at
17 all times acting within the scope of the attorney-client relationship—as a matter of law.
- 18 ➤ David's conspiracy claim also fails because the alleged object of the conspiracy, to
19 defraud David, is contradicted by an express provision of the Divorce Decree.
- 20 ➤ David's breach of contract claim is barred by the parol evidence rule because the
21 Divorce Decree is the final integrated agreement and supersedes any prior agreements
22 (including the MOU and any other alleged oral agreements).

23 In sum, David's claims are subject to special motion to dismiss and he cannot meet his
24 burden of establishing a probability of prevailing on any of them. Accordingly, Sarah respectfully
25 requests that this Court grant her Motion and award her, pursuant to NRS 41.670(1), her reasonable
26 attorney's fees and costs, plus \$10,000.

II. STATEMENT OF FACTS

A. The Divorce Action.

Sarah and David were married on June 17, 2006. (Compl. for Divorce, Case No. D-17-547250-D, filed on June 22, 2017, at 1; Ex. A, Decl. of Sarah Janeen Rose [“Sarah Decl.”] ¶ 4.) On February 22, 2017, David filed a Complaint for Divorce against Sarah (the Divorce Action). (*See generally id.*; Ex. A, Sarah Decl. ¶ 5.)

B. The Mediation.

On March 23, 2018, Sarah and David, along with their respective counsel, participated in a mediation with the Honorable Rhonda K. Forsberg² in an effort to resolve the Divorce Action. (Compl. ¶¶ 10, 14; Ex. A, Sarah Decl. ¶ 6.) At that time, David was represented by co-defendant Regina McConnell, Esq. (“McConnell”) and Sarah was represented by co-defendant Cooley. (Compl. ¶ 10; Ex. A, Sarah Decl. ¶ 7.)

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 PERS pension. (Compl. ¶ 12; Ex. A, Sarah Decl. ¶ 8.) David alleges, and Sarah denies, that David refused to grant survivor benefits to Sarah. (Compl. ¶¶ 13-14; Ex. A, Sarah Decl. ¶ 8.)

C. The Memorandum of Understanding.

The mediation was successful. (Compl. ¶ 14; Ex. A, Sarah Decl. ¶ 9.) Judge Forsberg drafted a three-page memorandum of understanding (the MOU), which memorialized the material terms of Sarah and David’s agreement. (Compl. ¶ 15; *id.*, Ex. 1, MOU; Ex. A, Sarah Decl. ¶ 10.) The MOU provided that its purpose was “to memorialize” the parties’ agreement. (Compl., Ex. 1, MOU, at 1.) The MOU stated it included the “material terms” of their agreement and was intended to bind the parties to those material terms. (*Id.*) The MOU provided “that counsel for Sarah shall draft a *final formal agreement* incorporating the terms herein,” and “[t]hat [final formal] agreement shall be ratified by the Court, but shall not merge and shall retain its separate nature as a contract.” (*Id.* (emphasis added).) The MOU did not address survivor benefits. (*See generally id.*)

² Judge Forsburg was appointed to Department G of the Family Division of the Eighth Judicial District Court after the mediation.

D. The Divorce Decree.

After Sarah and David executed the MOU, Sarah (through her counsel) drafted a 39-page Stipulated Decree of Divorce (the Divorce Decree). (Compl. ¶ 15; *id.*, Ex. 1, Divorce Decree; Ex. A, Sarah Decl. ¶ 11.) David and his counsel (McConnell) were given a copy of the Divorce Decree for their review. (Compl. ¶ 18; Ex. A, Sarah Decl. ¶ 12.) McConnell advised David to execute the Divorce Decree, which he did. (Compl. ¶ 18; *id.*, Ex. 2, Divorce Decree, at 39.)

The Divorce Decree unambiguously provided that David would name Sarah as the irrevocable survivor beneficiary of David's PERS pension. (*Id.*, Ex. 2, Divorce Decree, at 21, 24.) Further, the Divorce Decree contained many other terms that were not addressed by the MOU, including:

- Certain details concerning child support (*id.* at 11:20 – 12:1);
- Health insurance coverage for their minor children (*id.* at 12:11 – 13:20);
- Unreimbursed medical expenses for their minor children (*id.* at 13:20 – 17:16);
- The allocation of the dependent child tax credit (*id.* at 17:14 – 18:4);
- The division of furniture and furnishings (*id.* at 22:14-16, 25:4-6);
- The division of personal property and jewelry (*id.* at 22:28, 25:9-10);
- Directions for the division of the PERS pension through a Qualified Domestic Relations Order (QDRO) (*id.* at 21:22 – 22:13, 24:10-28);
- The division of their community debts (*id.* at 25:12 – 26:17);
- The filing of tax returns (*id.* at 28:4 – 29:25);
- Treatment of future-acquired property (*id.* at 30:1-15);
- Waiver of inheritance rights (*id.* at 31:1-25);
- Mutual release of obligations and liabilities (*id.* at 32:1-20); and
- Handling of omitted community property and debts (*id.* at 36:36 – 37:14).

Simply put, the Divorce Decree contains many terms necessary to resolve a divorce that were not addressed by the MOU. (*Compare id.* with *id.*, Ex. 1, MOU.)

The Divorce Decree also, contains an integration/merger clause, providing that the “Decree of Divorce contains the entire agreement of the parties on these matters, *superseding any previous*

1 **agreement between them.”** (*Id.* at 38 (emphasis added).) Additionally, the parties agreed that “[n]o
2 other agreement, statement, or promise made on or before the effective date of this Decree of
3 Divorce by or to either party or his or her agent or representative will be binding on the parties
4 unless (a) made in writing and signed by both parties, or (b) contained in an order of a Court of
5 competent jurisdiction. (*Id.* at 38-39.) There is no other agreement, statement, or promise—either
6 in a writing signed by both parties or in an order of a Court—addressing survivor benefits. (Ex. A,
7 Sarah Decl. ¶ 13.)

8 Sarah (through her counsel) submitted the Divorce Decree to the judge assigned to the
9 Divorce Action. (Compl. ¶ 19; Ex. A, Sarah Decl. ¶ 14.) The Divorce Decree was entered on April
10 11, 2018. (Compl., Ex. 2, Divorce Decree.)

11 **E. David Moves to Set Aside the Divorce Decree, in Part.**

12 On April 25, 2018, David filed a Motion to Set Aside the Paragraph Regarding Survivor
13 Benefits in the Decree of Divorce Based Upon Mistake (the “Motion to Set Aside”). (*See* Motion
14 to Set Aside, Case No. D-17-547250-D, filed on April 25, 2018.) In essence, David contends that
15 he did not agree to designate Sarah as the survivor beneficiary and the inclusion of that term in the
16 Divorce Decree was a mistake. (*See generally id.*) The Family Court initially granted David’s
17 Motion to Set Aside, removing the award of survivor benefits to Sarah from the Divorce Decree.
18 (*See* Order, Case No. D-17-547250-D, filed on Sept. 25, 2018.)

19 **F. Sarah Moves to Alter or Amend Judgment.**

20 On October 9, 2018, Sarah filed a Motion to Alter or Amend Judgment, or, in the
21 Alternative, for New Trial Pursuant to NRCP 59(a)(7). (*See* Motion to Alter/Amend, Case No. D-
22 17-547250-D, filed on Oct. 9, 2018.) On January 16, 2019, the Family Court entered an order
23 setting aside its prior order granting David’s Motion to Set Aside and set the matter (including
24 David’s Motion to Set Aside) for an evidentiary hearing. (*See* Order, Case No. D-17-547250-D,
25 filed on Jan. 16, 2019.)

26 The Court began the evidentiary hearing on the Motion to Set Aside (and other motions) on
27 January 27, 2020. (*See* Minutes, Case No. D-17-547250-D, filed on Jan. 27, 2020.) As of the
28 submission of this Motion, the Family Court has continued the evidentiary hearing to July 22, 2020.

1 (See Amended Order Setting Evidentiary Hearing, Case No. D-17-547250-D, filed on April 10,
2 2020.) It is anticipated that Cooley will testify as a witness at the continued evidentiary hearing.
3 (Ex. A, Sarah Decl. ¶ 16.)

4 **G. David Initiates this Lawsuit While the Divorce Action Remains Pending.**

5 On May 29, 2020, David initiated this lawsuit against McConnell (and her law firm), Cooley
6 (and her law firm), and Sarah.

7 David contends that McConnell, his prior counsel in the Divorce Action, committed legal
8 malpractice by “a. Failing to actively participate in drafting the Decree to ensure the agreed upon
9 terms are properly reflected in the final draft; b. Failing to properly read, review, and object to the
10 Decree that contained unfavorable terms that [David] did not agree to; and c. Advising [David] to
11 sign the Decree that contained unfavorable terms that [David] did not agree to.” (Compl. ¶ 25.)

12 David asserts two causes of action against Sarah and Cooley (Sarah’s former counsel in the
13 Divorce Action). First, David asserts a claim for civil conspiracy against Sarah and Cooley,
14 alleging they “acted in concert to intentionally defraud [David] into signing the legally binding
15 Decree of Divorce with terms that were not agreed to” and that they “had no intention of abiding to
16 the agreed upon terms as outlined in the MOU.” (*Id.* ¶¶ 41-42.) Second, David asserts that Sarah
17 and Cooley breached an agreement that Sarah would not receive survivor benefits (which he alleges
18 is reflected in the MOU even though it does not address survivor benefits) by: “a. Drafting the
19 Decree of Divorce, which contained terms that SARAH would be entitled to survivorship benefits
20 under Plaintiff’s PERS account; b. Submitting the Decree of Divorce so that its terms become
21 legally enforceable; c. Seeking to enforce the survivorship benefit from the Decree, despite being
22 contradictory to the agreed upon terms of the MOU.” (*Id.* ¶ 47.)³

23
24
25
26
27 ³ The conspiracy claim does not state the amount of damages sought by David and the breach of
28 contract claim states that David seeks damages in excess of \$10,000—presumably based on the prior
jurisdictional amount for district court actions. (*Id.* ¶¶ 43, 47.)

III. ANTI-SLAPP

A. Procedure Under Nevada's Anti-SLAPP Statute.

In 1993, the Nevada legislature adopted an anti-SLAPP statute based upon California's anti-SLAPP statute. *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d 1276, 1281 (2009).

"A SLAPP lawsuit is characterized as a meritless suit filed primarily to chill the defendant's exercise of First Amendment rights." *Id.* at 752, 219 P.3d at 1280 (internal quotation marks omitted). "SLAPP lawsuits abuse the judicial process by chilling, intimidating, and punishing individuals for their involvement in public affairs." *Id.* at 752, 219 P.3d at 1281.

Nevada's anti-SLAPP statute provides that a defendant may file a special motion to dismiss within 60 days after service of the complaint. NRS 41.660(1)-(2). Initially, a defendant 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).

Nevada's anti-SLAPP statute is modeled on California's anti-SLAPP statute. *John*, 125 Nev. at 752, 219 P.3d at 1281. Accordingly, the Nevada Supreme Court generally relies upon California case law when interpreting Nevada's anti-SLAPP statute. *Id.* at 756, 219 P.3d at 1283 ("When determining whether Nevada's anti-SLAPP statute falls within this category, we consider California case law because California's anti-SLAPP statute is similar in purpose and language to Nevada's anti-SLAPP statute."); *Coker v. Sassone*, 135 Nev. 8, 11, 432 P.3d 746, 749 (2019) ("This court has repeatedly recognized the similarities between California's and Nevada's anti-SLAPP statutes, routinely looking to California courts for guidance in this area.").⁴

⁴ Indeed, the Nevada legislature, when amending the anti-SLAPP statute in 2015, directly referenced its reliance upon California's interpretation of its anti-SLAPP statute. *See* NRS 41.665(2) ("[T]he plaintiff must meet the same burden of proof that a plaintiff has been required to meet

B. David’s Claims Against Sarah are Based Upon a Good Faith Communication in Furtherance of the Right to Free Speech in Direct Connection with an Issue of Public Concern.

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); *see also* Cal. Civ. Proc. Code § 425.16(e)(2). 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 anti-SLAPP statute applies to “**communicative conduct** such as the filing, funding, and prosecution of a civil action.” *See Rusheen v. Cohen*, 128 P.3d 713, 718 (Cal. 2006) (emphasis added); *see also Allstate Ins. Co. v. Belsky*, No. 2:15-cv-02265-MMD-CWH, 2017 U.S. Dist. LEXIS 224167, at *10 (D. Nev. Mar. 31, 2017) (finding party’s “petition[ing] a court for redress” was “an activity which California courts interpreting California’s corresponding statute have found qualifies as a good faith communication in furtherance of the right to petition,” and was thus subject to Nevada’s anti-SLAPP statute) (internal quotation marks omitted); *accord John*, 125 Nev. at 761, 219 P.3d at 1286 (affirming district court’s application of Nevada’s Anti-SLAPP statute where it found defendants’ “**actions** were protected activity under the anti-SLAPP statute”) (emphasis added).

Here, David’s claims against Sarah are based on her “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . . judicial body,” and are thus subject to Nevada’s anti-SLAPP statute. NRS 41.637(3). Specifically, the gravamen of David’s claims

pursuant to **California’s** anti-Strategic Lawsuits Against Public Participation law”) (emphasis added); *see also Coker*, 135 Nev. at 11 n.3, 432 P.3d at 749 n.3 (finding “reliance on California caselaw is warranted” given “the similarity in structure, language, and the **legislative mandate** to adopt California’s standard for the requisite burden of proof”) (emphasis added).

1 against Sarah is that she breached an alleged agreement and defrauded him by “drafting the Decree
2 of a Divorce” with a term entitling her to survivor benefits and “[s]ubmitted the Decree of Divorce
3 [to the court] so that its terms become legally enforceable.” (Compl. ¶ 46.) Sarah’s negotiations
4 with David, her drafting of the Divorce Decree (through her counsel), and her submission of the
5 Divorce Decree to the Family Court (through her counsel) are all written and alleged oral
6 statements made in direct connection with an issue (the Divorce Action) under consideration by a
7 judicial body (the family court). The statements contained in the Divorce Decree and the alleged
8 oral statements obviously “relate to the substantive issues in the litigation” and are “directed to
9 persons having some interest in the litigation,”—specifically, to David and the Family Court. *See*
10 *Patin*, 134 Nev. at 726, 429 P.3d at 1251.

11 The California Supreme Court has ruled—in an opinion that has been cited twice by the
12 Nevada Supreme Court with approval⁵—that claims such as breach of contract and fraud arising
13 from the negotiation and execution of settlement documents are subject to anti-SLAPP. *See*
14 *Navellier v. Sletten*, 52 P.3d 703, 709 (Cal. 2002) (finding plaintiffs’ claims for breach of contract
15 and fraud were subject to anti-SLAPP because defendant’s “negotiation and execution of” the
16 settlement agreement “involved ‘statement[s] or writing[s] made in connection with an issue under
17 consideration or review by a . . . judicial body’”) (alterations in original) (emphasis added) (quoting
18 Cal. Civ. Proc. Code § 425.16(e)(2)); *Navarro v. IHOP Props., Inc.*, 36 Cal. Rptr. 3d 385, 391-92
19 (Cal. Ct. App. 2005) (finding claim that defendant defrauded plaintiff into signing stipulated
20 judgment was subject to anti-SLAPP); *Dowling v. Zimmerman*, 103 Cal. Rptr. 2d 174, 190 (Cal. Ct.
21 App. 2001) (finding anti-SLAPP applied to plaintiff’s claims, including a claim for fraud, where
22 “complaint arose from [defendant’s] acts of negotiating a stipulated settlement . . .”).

23 Finally, none of the alleged statements are false. (Ex. A, Sarah Decl. ¶ 15.) Even assuming
24 Sarah and David had orally agreed that Sarah would not receive survivor benefits at the mediation
25 (they did not), neither their alleged agreement nor the inclusion of the survivor benefits in the
26 Divorce Decree are false statements. Sarah and David had the right to propose and alter terms until

27 ⁵ *See Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062, 1069 (2020); *Omerza v. Fore Stars*,
28 No. 76273, 2020 Nev. Unpub. Lexis 96, at *3-4 (Nev. Jan. 23, 2020).

1 the execution of their final integrated agreement (the Divorce Decree). Moreover, as further
2 detailed below, because the Divorce Decree is the final integrated agreement, David cannot use
3 parol evidence (such as the alleged oral agreement) to contradict the Divorce Decree’s express
4 terms. (Compl., Ex. 2, Divorce Decree, at 38.)

5 Accordingly, because Sarah has met her initial burden of demonstrating, by a preponderance
6 of the evidence, that the claims at issue are subject to the anti-SLAPP statute, the burden of proof
7 shifts to David to demonstrate, with “prima facie evidence,” that he has a “probability of prevailing
8 on” his claims. *See* NRS 41.660(3)(a), (3)(c). As explained below, David cannot demonstrate a
9 probability of prevailing on his claims because they all fail as matter of law, and therefore this
10 matter must be dismissed. *See* NRS 41.4660(5).

11 IV. DAVID’S CLAIMS FAIL

12 In the alternative to seeking dismissal under Nevada’s anti-SLAPP statute, Sarah seeks
13 dismissal of David’s claims under NRCP 12(b)(1) and NRCP 12(b)(5). Because an analysis of
14 David’s claims under the second prong of Nevada’s anti-SLAPP is partially⁶ co-extensive with an
15 analysis of his claims under NRCP 12(b)(1) and NRCP 12(b)(5), the analysis is addressed jointly
16 below—i.e. anti-SLAPP/NRCP 12(b)(1), and anti-SLAPP/NRCP 12(b)(5).

17 A. This Court Lacks Subject Matter Jurisdiction.

18 “Subject matter jurisdiction is the court’s authority to render a judgment in a particular
19 category of case.” *Landreth v. Malik*, 127 Nev. 175, 183, 251 P.3d 163, 168 (2011). A defendant
20 may move to dismiss a complaint on the basis of a “lack of subject-matter jurisdiction.” NRCP
21 12(b)(1). Further, a court must dismiss an action, *sua sponte*, if it “determines at any time that it
22 lacks subject-matter jurisdiction” NRCP 12(h)(3).

23
24
25 ⁶ To be clear, David must do more than establish this Court has subject matter jurisdiction and that
26 he has alleged viable claims in order to survive a special motion to dismiss—he must adduce “prima
27 facie evidence,” that demonstrates that he has a “probability of prevailing on” his claims. *See* NRS
28 41.660(3)(a), (3)(c). That Sarah can demonstrate that this Court lacks subject matter jurisdiction and
that David’s claims fail as a matter of law, does not alleviate David’s burden of adducing prima facie
evidence. *See id.*

1 The “family court division has *original and exclusive jurisdiction* over matters affecting the
2 familial unit including *divorce*” *Landreth*, 127 Nev. at 184, 251 P.3d at 169 (emphasis added);
3 NRS 3.223(1)(a) (stating that, in judicial districts where established, family courts have original and
4 exclusive jurisdiction over all proceedings brought pursuant to NRS Chapter 125).

5 The Nevada Supreme Court has repeatedly held that a divorce decree destroys the
6 independent contractual nature of a merged pre-decree agreement unless the agreement *and the*
7 *divorce decree* direct that the agreement is to survive. *See Day v. Day*, 80 Nev. 386, 389-90, 395
8 P.2d 321, 322-23 (1964) (holding the “survival provision of a [pre-decree] agreement is ineffective
9 unless the court decree specifically directs survival.”); *Vaile v. Porsboll*, 128 Nev. 27, 33 n.7, 268
10 P.3d 1272, 1276 n.7 (2012) (“[W]hen a support agreement is merged into a divorce decree, the
11 agreement loses its character as an independent agreement, unless both the agreement and the
12 decree direct the agreement’s survival”).⁷ Under such circumstances, a party may not seek to
13 modify, rescind, or enforce the merged agreement under contract principles. *See Vaile*, 128 Nev. at
14 33 n.7, 268 P.3d at 1276 n.7 (“Because the parties’ agreement was merged into the divorce decree,
15 to the extent that the district court purported to apply contract principles, specifically, rescission,
16 reformation, and partial performance . . . to support its decision . . . any application of contract
17 principles to resolve the issue [addressed] . . . was improper.”).⁸ Instead, the parties’ remedies are
18 limited to those available to address the divorce decree itself—e.g., the Nevada Rules of Civil
19 Procedure and NRS Chapter 125. *See Lin v. Lin*, No. 77351-COA, 2020 Nev. App. Unpub. LEXIS
20 241, at *6 n.4 (Nev. Ct. App. March 30, 2020) (“We note that although the parties agreed to the
21

22 ⁷ *Accord Viallet-Volk v. Volk*, No. 62261, 2014 Nev. Unpub. LEXIS 1661, at *2-3 (Nev. Oct. 13,
23 2014) (“[T]he merger of an agreement into a divorce decree destroys the independent existence of
the agreement.”).

24 ⁸ *Accord Viallet-Volk*, No. 62261, 2014 Nev. Unpub. LEXIS 1661, at *3 (“[B]ecause the marital
25 settlement agreement and memorandum of agreement were incorporated and merged into the divorce
26 decree, any attempt to enforce these agreements under contract principles is improper.”); *Friedman*
27 *v. Friedman*, Nos. 56265, 56616, 57424, 57480, 2012 Nev. Unpub. LEXIS 1812, at *6-7 (Nev. Dec.
28 20, 2012) (“A clear and direct expression of merger in the decree of divorce destroys the independent
contractual nature of the marital settlement agreement, and parties may no longer seek to enforce the
agreement under contract principles.”).

1 distribution of property in the MOU, because the agreement was merged into the decree, the parties'
2 rights stem from the decree and are subject to the provisions of NRS Chapter 125.”).

3 For example, in *Day*, the Nevada Supreme Court held that a divorce decree destroyed a pre-
4 decree agreement concerning alimony even though the pre-decree agreement “expressly stated that
5 the agreement was not to be merged into any decree of divorce entered later.” 80 Nev. at 387, 395
6 P.2d at 321. There, a wife and husband executed a written agreement concerning the husband’s
7 payment of alimony to the wife and expressly provided that it would not merge into any subsequent
8 divorce decree. *Id.* Later, the court entered a divorce decree that adopted the written agreement,
9 but “did not itself state that the agreement was not merged, nor did it expressly provide that the
10 agreement survive the decree.” *Id.*

11 The wife subsequently sought a judgment for the husband’s non-payment of alimony under
12 NRS 125.180, and the husband argued that the wife’s sole remedy was a breach of contract action
13 on the pre-decree agreement. *Id.* at 387-88, 395 P.2d at 322. The Nevada Supreme Court rejected
14 the husband’s argument, finding that the pre-decree agreement’s survival provision was ineffective
15 because the divorce decree itself did not direct survival. *Id.* at 389, 395 P.2d at 322-23. The Court
16 explained that absent “a clear and direct expression [of survival] in the decree we shall presume that
17 the court rejected the contract provision for survival by using words of merger in its decree”
18 *Id.* at 389-90, 395 P.2d at 323. As such, the Court held that the wife’s remedy was through
19 enforcement of the divorce decree via NRS 125.180. *Id.* at 390, 395 P.2d at 323.

20 Here, any prior agreements between Sarah and David (including the MOU and the alleged
21 oral agreement) were merged into and destroyed by the Divorce Decree. The Divorce Decree
22 contains an integration/merger clause, providing that David and Sarah “expressly agree that *this*
23 *Decree of Divorce contains the entire agreement of the parties on these matters, superseding any*
24 *previous agreement between them.*” (Compl., Ex. 2, Divorce Decree, at 38 (emphasis added).)
25 Moreover, the Divorce Decree expressly references the MOU (which is attached to the Divorce
26 Decree) but does not specifically direct the survival of the MOU or any other agreements. (*See*

1 *generally id.*)⁹ Thus, the MOU and any other agreements were merged into the Divorce Decree and
2 did not survive. *Day*, 80 Nev. at 389-90, 395 P.2d at 323.

3 Because the MOU and any other agreements were merged into the Divorce Decree, David’s
4 remedies are limited to those available to address the Divorce Decree itself—such as his Motion to
5 Set Aside currently pending in the Divorce Action. *See Lin*, No. 77351-COA, 2020 Nev. App.
6 Unpub. LEXIS 241, at *6 n.4. The Family Court has *exclusive jurisdiction* to address the Divorce
7 Decree. *See* NRS 3.223(1)(a); *Landreth*, 127 Nev. at 184, 251 P.3d at 169. Accordingly, this Court
8 lacks subject-matter jurisdiction to address David’s claims against Sarah.

9 Because this Court lacks subject matter jurisdiction, David cannot meet his burden to
10 demonstrate a “probability of prevailing” on his claims and this Court should grant the Motion. *See*
11 NRS 41.660(3)(c); *see also Barry v. State Bar of Cal.*, 386 P.3d 788, 792 (Cal. 2017) (“The
12 pertinent question under the [anti-SLAPP] statute is simply whether the plaintiff has established a
13 probability of prevailing on a claim . . . alleged to justify a remedy. . . . While lack of substantive
14 merit is one reason a plaintiff might fail to make the requisite showing, *lack of subject matter*
15 *jurisdiction is another*. A plaintiff cannot prevail on her claim unless the court has the power to
16 grant the remedy she seeks.”) (emphasis added).

17 **B. Even Assuming this Court had Subject Matter Jurisdiction, David Cannot**
18 **Adduce Prima Facie Evidence to Demonstrate that he has a Probability of**
19 **Prevailing on his Claims Because they Fail as a Matter of Law.**

20 **1. Standard of Decision under NRCP 12(b)(5).**

21 Under NRCP 12(b)(5), “[d]ismissal is proper where the allegations are insufficient to
22 establish the elements of a claim for relief.” *Stockmeier v. Nev. Dept. of Corrections*, 124 Nev. 313,
23 316, 183 P.3d 133, 135 (2008) (internal quotation marks omitted). A complaint shall be dismissed
24 “if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would

25 ⁹ In fact, the MOU itself does not state that it (the MOU) would survive the entry of a divorce
26 decree. Instead, the MOU contemplated that the parties would draft a “final formal agreement” that
27 would “not merge” and “retain its separate nature as a contract.” (Compl., Ex. 1, MOU, at 1.) The
28 Parties never drafted a “final formal agreement,” apart from the Divorce Decree. (Ex. A, Sarah Decl.
¶ 15.) Regardless, the Divorce Decree does not direct the survival of the MOU or any other agreement
and that ends the inquiry. *See Day*, 80 Nev. at 389-90, 395 P.2d at 323.

entitle it to relief.” *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672; *see also Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (providing that dismissal under Rule 12(b)(5) is appropriate where the allegations “fail to state a cognizable claim for relief”).

When deciding a motion to dismiss, the Court need not accept legal conclusions as true, even if they are cast in the form of factual allegations. *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994);¹⁰ *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1249 (D. Nev. 2003); *see also Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 875, 8 P.3d 837, 840 (2000) (stating that “[a] bare allegation is not enough” and that a complaint “must set forth sufficient facts to establish all necessary elements of a claim for relief”).

Also, in deciding a motion to dismiss, the court may consider materials outside the pleadings if those materials are attached to the complaint, *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 (9th Cir. 1990), are referenced by the complaint, *Durning v. First Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987), or are properly subject to judicial notice—such as matters of public record, *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986).

2. *David’s Claims are Unripe.*

In order for a claim to be justiciable, it must be ripe for review. *See Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986). A dispute is not ripe “if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300 (1998).

Here, David’s claims are plainly unripe. Specifically, David’s claims are contingent on the outcome of the Divorce Matter. David’s Motion to Set Aside the Divorce Decree ***remains pending in the Divorce Matter*** and, if he prevails on it, then the claims asserted in this matter will be moot—he will have suffered no damages. Indeed, as explained above, an evidentiary hearing in the Divorce Matter is currently set for July 22, 2020.

Because David’s claims are contingent upon the Divorce Matter, they are unripe and must be dismissed. *See Texas*, 523 U.S. at 300; *Doe*, 102 Nev. at 525, 728 P.2d at 444.

¹⁰ Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority in Nevada courts. *See Exec. Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

1 **3. *David’s Conspiracy Claim Fails as a Matter of Law.***

2 Civil conspiracy involves a “combination of two or more persons who, by some concerted
3 action, intend to accomplish some unlawful objective for the purpose of harming another which
4 results in damage.” *Collins v. Union Fed. Sav. & Loan Assn.*, 99 Nev. 284, 303, 662 P.2d 610, 622
5 (1983). Additionally, an actionable civil conspiracy requires “the commission of an underlying tort;
6 and an agreement between the defendants to commit that tort.” *Vo v. Am. Brokers Conduit*, No.
7 3:09-CV-00654-LRH, 2010 WL 2696407, at *2 (D. Nev. July 2, 2010); *Paul Steelman Ltd. v. HKS,*
8 *Inc.*, No. 2:05-CV-01330-BES-RJJ, 2007 WL 295610, at *3 (D. Nev. Jan. 26, 2007) (“Civil
9 conspiracy is not an independent cause of action – it must arise from some underlying wrong.”).

10 Here, David asserts a claim for civil conspiracy against Sarah and her former legal counsel
11 (Cooley), alleging they “acted in concert to intentionally defraud Plaintiff into signing the legally
12 binding Decree of Divorce with terms that were not agreed to” and “had no intention of abiding to
13 the agreed upon terms as outlined in the MOU.” (Compl. ¶¶ 41-42.) David’s civil conspiracy claim
14 fails for two independent reasons.

15 a. Sarah Cannot Conspire with Cooley as a Matter of Law.

16 David’s civil conspiracy claim is based on an alleged conspiracy between an attorney
17 (Cooley) and a client (Sarah) concerning a matter plainly within the scope of their attorney-client
18 relationship (the Divorce Matter). As a matter of law, no such conspiracy can exist.

19 A client cannot conspire with her legal counsel who is acting within the scope of attorney-
20 client relationship. *See Crossroads Partners v. Utah Crossing, Ltd.*, Nos. 98-15673, 98-15674,
21 1999 U.S. App. LEXIS 22721, at *10 (9th Cir. Sep. 9, 1999) (finding, under Nevada law, a civil
22 conspiracy between a client and a lawyer was barred because “[t]here can be no conspiracy between
23 an agent and its principal when the agent acts only in the agent’s official capacity on behalf of the
24 principal, and not for the agent’s private benefit.”); *Fraidin v. Weitzman*, 611 A.2d 1046, 1079 (Md.
25 1992) (“There can be no conspiracy when an attorney acts within the scope of his employment.”);
26 *Macke Laundry Serv. Ltd. Pshp. v. Jetz Serv. Co.*, 931 S.W.2d 166, 176 (Mo. Ct. App. 1996) (“As
27 an agent of the client, an attorney acts as the client’s alter ego and not for the attorney,” and thus
28 “an identity between agent and principal leads to a legal impossibility in the context of conspiracy,”

1 because “[t]wo entities which are not legally distinct cannot conspire with one another.”); *accord*
2 *Collins v. Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983) (“Agents and
3 employees of a corporation cannot conspire with their corporate principal or employer where they
4 act in their official capacities on behalf of the corporation and not as individuals for their individual
5 advantage.”).

6 Here, David’s alleged conspiracy between Sarah and her legal counsel fails as a matter of
7 law because Cooley was (at all times relevant to David’s claims) acting in her capacity as Sarah’s
8 attorney/agent. (Compl. ¶ 41; Ex. A, Sarah Decl. ¶ 17.) Specifically, in attending the mediation,
9 negotiating on behalf of Sarah, reviewing the MOU, and drafting the Divorce Decree, Cooley was
10 acting within the scope of her representation of Sarah in the Divorce Matter. (Compl. ¶ 41; Ex. A,
11 Sarah Decl. ¶¶ 7, 11, 12, 14, 17.) Indeed, David does not allege—and cannot allege—that Cooley
12 was acting outside the scope of the attorney-client relationship concerning the alleged conspiracy.
13 (*See generally* Compl.)

14 Because Cooley’s actions were all within the scope of her representation of Sarah in the
15 Divorce Action, a civil conspiracy cannot exist between them (principal/client and agent/attorney)
16 as a matter of law. *See Crossroads Partners*, Nos. 98-15673, 98-15674, 1999 U.S. App. LEXIS
17 22721, at *10; *Macke Laundry Serv. Ltd. Pshp.*, 931 S.W.2d at 176.

18 b. David Cannot Allege Fraud Based on a Parol Agreement that is
19 Contradicted by an Express Term of Divorce Decree.

20 David’s claimed conspiracy is that Sarah and Cooley conspired to defraud him “into signing
21 the legally binding Decree of Divorce with terms that were not agreed to,” and that Sarah “had no
22 intention of abiding to the agreed upon terms outlined in the MOU.” (Compl. ¶¶ 41-42.) Even
23 assuming these allegations as true, they are not viable claims for fraud¹¹ as a matter of law.

24 First, David cannot assert fraud based on an alleged term (the survivor benefits) that is
25 contradicted by the unambiguous terms of a written agreement (the Divorce Decree). *See Rd. &*

26 _____
27 ¹¹ David’s claim is a “civil conspiracy-to-defraud claim,” to which “an underlying cause of action
28 for fraud is a necessary predicate” *Jordan v. State ex rel. DMV & Pub. Safety*, 121 Nev. 44, 74-
75, 110 P.3d 30, 51 (2005).

1 *Highway Builders v. N. Nev. Rebar*, 128 Nev. 384, 390, 284 P.3d 377, 380 (2012) (holding a claim
2 for fraud cannot be premised upon “parol agreements at variance with a written instrument”)
3 (internal quotation marks omitted). Stated differently, when a “plaintiff pleads that the writing . . .
4 does not express the intentions of the parties to it at the time, he pleads something which the law
5 will not permit him to prove.” *Id.* at 381 (internal citations and quotation marks omitted). Thus,
6 David’s allegation that the Divorce Decree “does not express the intentions of the parties to it at the
7 time” cannot constitute fraud as a matter of Nevada law. *See id.*¹²

8 Second, David cannot assert fraud based solely on Sarah’s alleged failure to perform (as to
9 an alleged term that is contradicted by the Divorce Decree). *See id.* at 389, 284 P.3d at 380
10 (“[T]here is no inference of a fraudulent intent not to perform from the mere fact that a promise
11 made is subsequently not performed.”).

12 In sum, David’s civil conspiracy claim fails because Sarah could not conspire with her
13 lawyer (Cooley) as a matter of law and because the alleged fraud is not cognizable under Nevada
14 law. *See Crossroads Partners*, Nos. 98-15673, 98-15674, 1999 U.S. App. LEXIS 22721, at *10;
15 *Rd. & Highway Builders*, 128 Nev. at 389, 284 P.3d at 380-81.

16
17
18 ¹² Further, whether David read or understood the Divorce Decree before signing it is immaterial.
19 When an individual executes an agreement, he or she is charged with knowledge of its contents and
20 is bound by its terms—irrespective of whether he or she reads the agreement. *See Pentax Corp. v.*
21 *Boyd*, 111 Nev. 1296, 1299, 904 P.2d 1024, 1026 (1995) (“Under Colorado law, parties may be held
22 to contracts which they did not read.”); *see also Upton v. Tribilcock*, 91 U.S. 45, 50 (1875) (“It will
23 not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say
24 that he did not read it when he signed it, or did not know what it contained. If this were permitted,
25 contracts would not be worth the paper on which they are written.”); *Rosenbaum v. Tex. Energies,*
26 *Inc.*, 736 P.2d 888, 891-92 (Kan. 1987) (“This court follows the general rule that a contracting party
27 is under a duty to learn the contents of a written contract before signing it. . . . As a result of this
28 duty, a person who signs a written contract is bound by its terms regardless of his or her failure to
read and understand its terms.”); *MS Credit Ctr., Inc. v. Horton*, 926 So. 2d 167, 177 (Miss. 2006)
(holding, under Mississippi law, that “parties to a contract have an inherent duty to read the terms of
a contract prior to signing; that is, a party may neither neglect to become familiar with the terms and
conditions and then later complain of lack of knowledge, nor avoid a written contract merely because
he or she failed to read it or have someone else read and explain it.”).

1 **4. David’s Breach of Contract Claim is Barred by the Parol Evidence Rule as**
2 **the Alleged Agreement is Contradicted by the Parties’ Integrated**
3 **Agreement (the Divorce Decree).**

4 David alleges that he and Sarah (and Cooley) “entered into a contract wherein [Sarah]
5 agreed that SARAH would NOT receive survivorship benefits under Plaintiff’s PERS account, as
6 outlined in the MOU.” (Compl. ¶ 45.) David alleges Sarah breached this alleged contract by
7 drafting the Divorce Decree to include providing survivor benefits to Sarah, submitting the Divorce
8 Decree to the Family Court “so that its terms became legally enforceable” and by seeking to enforce
9 the Divorce Decree. (*Id.* ¶ 46.) David’s claim is barred by the parol evidence rule.¹³

10 “A claim for breach of contract requires the plaintiff to demonstrate the following elements:
11 (1) the existence of a valid contract; (2) a breach by the defendant; and (3) damages as a result of
12 the breach.” *See Cohen-Breen v. Gray Television Grp., Inc.*, 661 F. Supp. 2d 1158, 1171 (D. Nev.
13 2009); *see also Calloway v. City of Reno*, 116 Nev. 250, 256, 993 P.2d 1259, 1263 (2000).

14 “The parol evidence rule forbids the reception of evidence which would vary or contradict
15 [an integrated agreement], since all prior negotiations and agreements are deemed to have been
16 merged therein.” *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (internal
17 quotation marks omitted). “An integrated agreement is a writing or writings constituting a final
18 expression of one or more terms of an agreement.” Restatement (Second) of Contracts § 209(1)
19 (1981). Where an agreement “which in view of its completeness and specificity reasonably appears
20 to be a complete agreement, it is taken to be an integrated agreement unless it is established by
21 other evidence that the writing did not constitute a final expression.” *Id.* § 209(3).

22 Here, any prior agreement of David and Sarah (including the MOU and any alleged oral
23 agreements) was merged into the Divorce Decree. As detailed above, the Divorce Decree contains
24 an integration/merger clause, providing that David and Sarah “expressly agree that **this Decree of**
25 **Divorce contains the entire agreement of the parties on these matters, superseding any previous**

26 ¹³ As detailed above, the Divorce Decree destroyed the independent contractual nature of the MOU
27 and any other pre-decree agreement between David and Sarah. As a result, David may not utilize
28 contract principles to collaterally attack the Divorce Decree. *See Vaile*, 128 Nev. at 33 n.7, 268 P.3d
 at 1276 n.7. However, even assuming contract principles could be applied, David’s claim is barred.

1 **agreement between them.**” (Compl., Ex. 2, Divorce Decree, at 38 (emphasis added).) Even if one
2 were to disregard the integration/merger clause, it is evident that the 39-page Divorce Decree, “in
3 view of its completeness and specificity reasonably appears to be a complete agreement,” and thus
4 should be presumed to be an integrated agreement—especially considering that the three-page
5 MOU failed to address numerous terms that were necessary to resolve the Divorce Matter. *See*
6 Restatement (Second) of Contracts § 209(3). Indeed, the MOU itself contemplates that it does not
7 represent the “final formal agreement” of the parties. (Compl. Ex. 1, MOU, at 1.)

8 Because the Divorce Decree is an integrated agreement, David cannot use parol evidence
9 (such as the alleged oral agreement or the MOU) to “vary or contradict [the Divorce Decree], since
10 all prior negotiations and agreements are deemed to have been merged therein.” *See Kaldi*, 117
11 Nev. at 281, 21 P.3d at 21 (internal quotation marks omitted). Accordingly, since the Divorce
12 Decree unambiguously provides that Sarah is to receive survivor benefits, David may not assert a
13 breach of contract action based on an alleged prior agreement that is directly contradicted by an
14 express term of the Divorce Decree. *See id.*; accord Restatement (Second) of Contracts § 213(1)
15 (1981) (“A binding integrated agreement discharges prior agreements to the extent that it is
16 inconsistent with them.”).

17 In sum, even if this Court were to apply contract principles, such principles dictate that
18 David’s breach of contract claim is not viable because David cannot use parol evidence to
19 contradict the express terms of the parties’ integrated agreement (the Divorce Decree). *See Kaldi*,
20 117 Nev. at 281, 21 P.3d at 21.

21 **C. This Court Should Award Sarah her Attorney’s Fees, Costs, and \$10,000**
22 **Pursuant to NRS 41.670(1).**

23 Nevada’s anti-SLAPP statute provides that if a court grants a special motion to dismiss, the
24 “court shall award reasonable costs and attorney’s fees to the person against whom the action was
25 brought” NRS 41.670(1)(a). Additionally, the “court may award, in addition to reasonable
26 costs and attorney’s fees awarded . . . an amount of up to \$10,000 to the person against whom the
27 action was brought.” NRS 41.670(1)(b).
28

1 As detailed above, David’s claims are subject to Nevada’s anti-SLAPP statute and David
2 cannot demonstrate, with “prima facie evidence,” a “probability of prevailing on [his] claim[s].”
3 See NRS 41.660(3)(c). Accordingly, this Court should grant the Motion and award Sarah her
4 reasonable attorney’s fees and costs, which will be proven by separate motion. See NRCP 54(d).

5 Further, given that David’s ulterior motives in filing this lawsuit are readily transparent—an
6 improper effort to gain leverage against her in the Divorce Action—this Court should award Sarah
7 the maximum \$10,000 as authorized by NRS 41.670(1)(b).

8 V. CONCLUSION

9 For the reasons set forth above, Sarah respectfully requests that this Court grant her Motion
10 in accordance with the anti-SLAPP statute as David’s lawsuit is an improper use of litigation in an
11 attempt to gain leverage against Sarah and to intimidate a witness (Cooley) in an upcoming
12 evidentiary hearing in the Divorce Action. As Sarah has established, David cannot meet his burden
13 of establishing a probability of prevailing on his claims because (i) this Court lacks subject matter
14 jurisdiction, (ii) David’s claims are unripe, and (iii) each of David’s claims separately fails as a
15 matter of law. Accordingly, this Court should grant Sarah’s Motion and award her attorney’s fees,
16 costs, and \$10,000 pursuant to NRS 41.670(1).

17 In the alternative, Sarah respectfully requests the Court dismiss David’s claims pursuant to
18 NRCP 12(b)(1) and NRCP 12(b)(5).

19 DATED this 6th day of July, 2020.

20 BAILEY❖KENNEDY

21 By: /s/ Paul C. Williams

22 DENNIS L. KENNEDY

23 PAUL C. WILLIAMS

24 *Attorneys for Defendant Sarah Janeen Rose*
25 *in Conjunction with the Legal Aid Center of*
26 *Southern Nevada Pro Bono Project*
27
28

Exhibit A

Exhibit A

DECLARATION OF SARAH JANEEN ROSE

I, Sarah Janeen Rose, declare as follows:

1. I am over eighteen (18) years of age and a resident of Clark County, Nevada.
2. I am competent to testify to the facts stated herein, which are based upon personal knowledge unless otherwise indicated, and if called upon to testify, I could and would testify competently to the following.
3. I make this declaration in support of my 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) (the “Motion”), in the matter entitled *David John Rose v. Regina McConnell, Esq., et al.*, A-20-815750-C, which is currently pending before the Eighth Judicial District Court.
4. On June 17, 2006, I married Plaintiff David John Rose (“David”).
5. On February 22, 2017, David filed a Complaint for Divorce against me, in the matter 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”).
6. On March 23, 2018, David and I, along with our respective counsel, participated in a mediation with the Honorable Rhonda K. Forsberg¹ in an effort to resolve the Divorce Action.
7. At the time of the mediation, David was represented by Defendant Regina McConnell, Esq. (“McConnell”) and I was represented by Defendant Shelly Booth Cooley, Esq. (“Cooley”).
8. It is my understanding that David alleges that, during the mediation, I requested to be designated as the survivor beneficiary under David’s Public Employees Retirement System (“PERS”) pension and that David refused my request. David’s allegation is incorrect. During the mediation, I did not request that David designate me as the survivor beneficiary and David

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

did not refuse to designate me as the survivor beneficiary. David and I did not make any oral agreements concerning the survivor benefits.

9. Ultimately, the mediation was successful in that David and I agreed to the material terms of our divorce.

10. Judge Forsberg drafted a three-page memorandum of understanding (the "MOU"), which memorialized the material terms of our (David and I's) agreement.

11. After the MOU was executed, Cooley—acting on my behalf—drafted a Stipulated Decree of Divorce (the "Divorce Decree").

12. Cooley—acting on my behalf—gave David and his counsel (McConnell) a copy of the Divorce Decree for their review.

13. Other than the Divorce Decree, there is no other agreement, statement, or promise—either in a writing signed by both parties or in an order of a Court—addressing survivor benefits under David's PERS pension. Further, there is no other "final formal agreement" (as contemplated by the MOU) other than the Divorce Decree.

14. Cooley, acting on my behalf, submitted the Divorce Decree to the judge assigned to the Divorce Action.

15. I am not aware of any statements that I made at the mediation, in the MOU, or in the Divorce Decree that are false.

16. It is my understanding that there is a continued evidentiary hearing in the Divorce Action on David's Motion to Set Aside the Paragraph Regarding Survivor Benefits in the Decree of Divorce Based Upon Mistake (and other motions) scheduled for July 22, 2020. It is my understanding that Cooley is anticipated to testify as a witness at the evidentiary hearing.

17. At all relevant times, Cooley was acting on my behalf in her capacity as my attorney.

I declare, under penalty of perjury, that the foregoing is true and correct.

EXECUTED this 6 day of July, 2020.

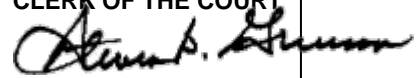


SARAH JANEEN ROSE

TAB 7

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
7/8/2020 1:29 PM
Steven D. Grierson
CLERK OF THE COURT



David Rose, Plaintiff(s)

vs.

Regina McConnell, ESQ, Defendant(s)

Case No.: A-20-815750-C

Department 11

NOTICE OF HEARING

Please be advised that the 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) in the above-entitled matter is set for hearing as follows:

Date: July 28, 2020

Time: 9:00 AM

Location: RJC Courtroom 03E
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

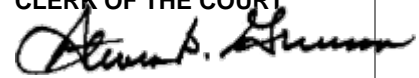
By: /s/ Marie Kramer
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Marie Kramer
Deputy Clerk of the Court

TAB 8



LIPSON NEILSON P.C.
JOSEPH P. GARIN, ESQ.
Nevada Bar No. 6653
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500
(702) 382-1512 - fax
jgarin@lipsonneilson.com

*Attorneys for Defendants
McConnell Law Ltd. & Regina McConnell, Esq.*

DISTRICT COURT
CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,
Plaintiff,

v.

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

**DEFENDANTS REGINA
MCCONNELL, ESQ. AND
MCCONNELL LAW LTD.'S
JOINDER TO 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)**

**Date: July 28, 2020
Time: 9:00 a.m.**

COMES NOW Defendants McConnell Law Ltd. & Regina McConnell, Esq.
(hereinafter "Defendants"), by and through their counsel of record, LIPSON NEILSON
P.C., hereby submit their Joinder to 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) ("Motion").

///

///

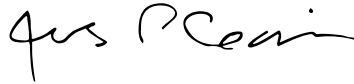
///

///

1 This Joinder is made and based upon the attached Memorandum of Points and
2 Authorities contained herein, the pleadings and papers filed herein, and any such oral
3 argument presented, if any, at the time of hearing.

4 DATED this 13th day of July, 2020.

5 LIPSON NEILSON P.C.

6 

7 By:

8 JOSEPH P. GARIN, ESQ.
9 Nevada Bar No. 6653
10 9900 Covington Cross Drive, Suite 120
11 Las Vegas, Nevada 89144
12 *Attorneys for Defendants*
13 *McConnell Law Ltd. & Regina McConnell, Esq*

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. FACTUAL BACKGROUND**

16 The underlying matter to the subject matter legal malpractice litigation involves a
17 divorce proceeding concerning Plaintiff David John Rose ("David") and Sarah Janeen
18 Rose ("Sarah"). The divorce proceeding went to mediation on March 23, 2018, wherein
19 David and Sarah addressed the division of community property and other issues. One
20 asset in particular addressed during mediation was David's Public Employees
21 Retirement System ("PERS"), his pension earned as a member of the Las Vegas
22 Metropolitan Police Department ("LVMPD"). See Complaint, a true and correct copy
23 attached hereto as Exhibit A; See also Motion.

24 After debating the issue of survivorship benefits to David's PERS pension, Sarah
25 allegedly conceded that she would *not* receive survivorship benefits. The March 23,
26 2018 mediation was successful, and the mediator memorialized the settlement terms in
27 a Memorandum of Understanding, which was executed by the mediator and the
28 respective counsel for David and Sarah. See Exhibit A; See also Motion.

Following the mediation, the Decree of Divorce was drafted, which included
certain language concerning the designation of survivorship benefits for David's PERS
pension. All parties executed the Decree of Divorce, which included the certain

1 aforementioned language, and was subsequently filed and entered on April 11, 2018.
2 See Exhibit A; See also Motion.

3 On April 25, 2018, David filed a Motion to Set Aside the Paragraph Regarding
4 Survivor Benefits in the Decree in Family Court, to which Sarah filed an Opposition. The
5 matter still remains active in Family Court, with an Evidentiary Hearing currently
6 scheduled. See Motion.

7 **II. LEGAL ARGUMENT**

8 In 1993, the Nevada legislature enacted statutory provisions to protect persons
9 making “good faith communication in furtherance of the right to petition” from being
10 subjected to retaliatory litigation arising from those communications. See *John v.*
11 *Douglas County School Dist.*, 219 P.3d 1276 (Nev. 2009) (superseded by statute); see
12 also Nev. Rev. Stat. § 41.660.

13 The primary purpose of these retaliatory lawsuits, known as Strategic Lawsuits
14 Against Public Participation or “SLAPP” suits, is “to chill the defendant’s exercise of First
15 Amendment rights.”¹ *Id.* (internal citations omitted). In most cases, this is accomplished
16 “by increasing litigation costs until the adversary’s case is weakened or abandoned.” *Id.*,
17 citing *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963,
18 969-70 (9th Cir. 1999).

19 Nevada’s anti-SLAPP statute levels the playing field by providing defendants “with
20 a procedural mechanism to dismiss the meritless lawsuit... **before** incurring the costs of
21 litigation.” *Coker v. Sassone*, 432 P.3d 746, 748 (Nev. 2019) (emphasis added); see also
22 Nev. Rev. Stat. §41.660(1)(a). Specifically, if a SLAPP action is filed “based upon a good
23 faith communication in furtherance of the right to petition ... the person against whom the
24 action is brought may file a special motion to dismiss.” See Nev. Rev. Stat.
25 §41.660(1)(a).

26
27
28 ¹ “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” First Amendment.

1 In analyzing the special motion to dismiss, the Court must first “[d]etermine
2 whether the moving party has established, by a preponderance of the evidence, that the
3 claim is based upon a good faith communication in furtherance of the right to petition or
4 the right to free speech in direct connection with an issue of public concern.” Nev. Rev.
5 Stat. § 41.660(3)(a); see also *Coker*, 432 P.3d at 749. If the moving party meets this
6 burden, the court must then “determine whether the plaintiff has demonstrated with
7 prima facie evidence a probability of prevailing on the claim.” Nev. Rev. Stat.
8 41.660(3)(b); see also *Delucchi v. Songer*, 396 P.3d 826 (Nev., 2017) (the applicable
9 version of NRS 41.660(3)(a) is the version in effect at the time of the events in
10 question).

11 Dismissal under this section operates as dismissal on the merits. Nev. Rev. Stat.
12 § 41.660(4). Further, if the court grants a special motion filed pursuant to NRS 41.660,
13 the court must award reasonable costs and attorney’s fees and may award an additional
14 amount up to \$10,000 to the person against whom the action was brought. Nev. Rev.
15 Stat. § 41.670.

16 Despite the matter lacking ripeness, as the matter is currently pending, and
17 undecided, in Family Court, the anti-SLAPP status is applicable as the matter concerns
18 a “[w]ritten or oral statement[s] made...in direct connection with an issue under
19 consideration by a . . . judicial body. See Nev. Rev. Stat § 41.637(3). More specifically,
20 here the matter concerns the written and/or oral statement made through the
21 negotiations for, and the resulting drafting and filing of the Decree of Divorce. See
22 Exhibit A. Furthermore, such written and/or oral statements, which are substantively and
23 directly connected to this litigation, are also directly related to both David and Sarah,
24 persons of interest in the litigation. As a result of such, the Complaint should be
25 dismissed.

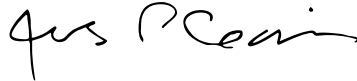
26 **III. CONCLUSION**

27 Based upon the foregoing, Defendants respectfully submit their Joinder to
28 Defendant Sarah Janeen Rose’s Special Motion to Dismiss Pursuant to NRS 41.660

1 (Anti-SLAPP), or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and
2 NRCP 12(b)(5), and request that such be granted.

3 DATED this 13th day of July, 2020.

4 LIPSON NEILSON P.C.

5 

6 By:

7 JOSEPH P. GARIN, ESQ.
8 Nevada Bar No. 6653
9 9900 Covington Cross Drive, Suite 120
10 Las Vegas, Nevada 89144

11 *Attorneys for Defendants*
12 *McConnell Law Ltd. & Regina McConnell, Esq.*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, on the 13th day of July, 2020, I electronically served the foregoing **DEFENDANTS REGINA MCCONNELL, ESQ. AND MCCONNELL LAW LTD.’S JOINDER TO 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)** through the Clerk’s Office using the E-File & ServeNV system for transmittal to the following parties:

James L. Edwards, Esq.
Adam C. Edwards, Esq.
COHEN JOHNSON PARKER EDWARDS
375 E. Warm Springs Rd, Suite 104
Las Vegas, NV 89119
jedwards@cohenjohnson.com
aedwards@cohenjohnson.com

Attorneys for Plaintiff

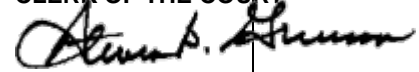
Dennis L. Kennedy, Esq.
Paul C. Williams, Esq.
BAILEY KENNEDY
8984 Spanish Ridge Ave.
Las Vegas, NV 89148-1302
Dkennedy@BaileyKennedy.com
Pwilliams@BaileyKennedy.com

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

/s/ Kim Glad

An Employee of LIPSON NEILSON P.C.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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,

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 based upon a selection of Option 2 being made at the time of retirement so as to name Sarah as the irrevocable survivor beneficiary. This was not included in the Memorandum because it was not agreed upon by the parties at the time of the mediation. Therefore, David requests that this paragraph be set aside as it was not agreed upon and it was mistakenly included and not noticed upon signing. Page 3, lines 27 – 28 and page 4, lines 1 – 5.

* * *

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

III.

FIRST CLAIM FOR RELIEF

(negligence)

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

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

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

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

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

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

COMPLAINT - 5

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.

///

11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

///
///
///

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.
23

24 ///

25 ///

26 ///

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.

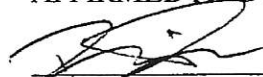
6. The parties shall follow and be subject to Department I's Behavior Order.

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

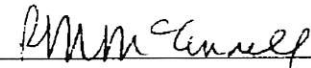


DAVID ROSE
Dated: 3-23-18



SARAH ROSE
Dated: 03/23/2018

Approved as to Form and Content:



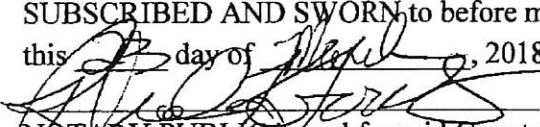
REGINA M. McConnell, ESQ.
Counsel for David Rose



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.

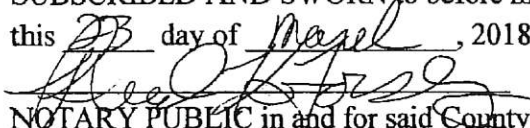

NOTARY PUBLIC in and for said County and State



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,

17 Plaintiff,

18 vs.

19 SARAH JANEEN ROSE,

20 Defendant.

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

Date of Hearing: N/a
Time of Hearing: N/a

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

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

20 The Court FINDS that there is community property and community
21 debt to be adjudicated by this Court.
22

23 The Court FINDS that the parties' have resolved all other issues,
24 including, but not limited to, child support, division of assets and debts,
25
26
27
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
12 NOTICE IS HEREBY GIVEN that the following statutory notices
13 relating to custody are applicable to DAVID JOHN ROSE and SARAH
14 JANEEN ROSE:
15

16 1) Pursuant to EDCR 5.301, the parties, and each of them, are
17 hereby placed on notice of the following:
18

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

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

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

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

27 (d) Knowingly permitting any other person to do any of the
28 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
7 constructive child support arrears. Said constructive child support arrears
8
9 shall be payable in monthly payments of \$270.00 for a period of 48 months
10 commencing April 1, 2018.

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

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

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
7 the lowest cost insurance choice.

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

21 e. Reimbursement For Out-of-Pocket Expenses: A
22 party who receives a written request for
23 contribution for an out-of-pocket health care
24 expense incurred by the other party must pay his
25 or her share of the out-of-pocket expense to the
26 paying party within thirty (30) days of receipt of
27 the written request for contribution. The court
28 encourages as much informal written
documentation as possible such as a handwritten
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 Division of the District Attorney has jurisdiction over the case.
10
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
11 and driver's license numbers of the parents of the child;
12 (b) The name and social security number of the child;
13 (c) The case identification number assigned by the court; and
14 (d) Such other information as the welfare department
15 determines is necessary to carry out the provisions of 42
16 U.S.C. Section 654a.

17
18 **C. Community Property:**

19
20 **1. Awarded to Plaintiff, DAVID JOHN ROSE:**

21
22 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
23 AND DECREED that DAVID JOHN ROSE is hereby awarded as her sole
24 and separate property, free of any claims of SARAH JANEEN ROSE, sole
25 ownership of the following:
26

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

1 Harbor Drive, Las Vegas, Nevada, within five (5) days of
2 executing the Decree of Divorce. The parties acknowledge that
3 the proceeds from the sale of the Marital Residence are
4 currently being held in the trust account of Regina M.
5 McConnell.
6
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
27
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
4 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
5 AND DECREED that SARAH JANEEN ROSE is hereby awarded as her
6
7 sole and separate property, free of any claims of DAVID JOHN ROSE, sole
8 ownership of the following:

9 a) The sum of \$27,792.98 (Twenty-seven Thousand Seven
10
11 Hundred Ninety-Two Dollars and Ninety-Eight Cents) from
12
13 the approximate \$55,585.95 (Fifty-five Thousand Five
14
15 Hundred Eighty-Five Dollars and Ninety-Five Cents) from the
16
17 proceeds from the sale of the Marital Residence located at 7705
18
19 Young Harbor Drive, Las Vegas, Nevada, to be paid within
20
21 five (5) days of executing the Decree of Divorce. The parties
22
23 acknowledge that the proceeds from the sale of the Marital
24
25 Residence are currently being held in the trust account of
26
27 Regina M. McConnell.

28 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 Nev. 856 (1990), in DAVID
JOHN ROSE's Las Vegas Metropolitan Police Department

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
24
25
26
27
28

1 c) All right, title and interest in the 2012 Scion XB
2 automobile, subject to the encumbrance thereon.
3

4 d) All right, title and interest in the furniture and
5 furnishings in her possession.
6

7 e) Any and all bank or financial institution accounts in her
8 name alone.
9

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

11 gh) All of her personalties.

12 **D. Community Debt:**
13

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

20
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 ADJUDGED AND DECREED that David shall pay SARAH JANEEN
3 ROSE the sum of \$22,792.97 (Twenty-two Thousand Seven Hundred
4 Ninety-Two Dollars and Ninety-Seven Cents) as and for lump sum, non-
5 modifiable alimony, to be paid within five (5) days of executing the Decree
6 of Divorce. The parties acknowledge that DAVID JOHN ROSE shall be
7 utilizing his share of the proceeds from the Marital Residence, currently
8 held in trust with Regina M. McConnell, to satisfy the alimony obligation.
9

10
11 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED
12 AND DECREED that said lump sum alimony payment received by
13 SARAH JANEEN ROSE shall be included as income to SARAH JANEEN
14 ROSE and deductible to DAVID JOHN ROSE on the parties' respective
15 federal income tax returns.
16
17

18
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 AND DECREED that SARAH JANEEN ROSE and DAVID JOHN ROSE
7 shall file separate tax returns beginning with the calendar year of 2018.
8 Each party will report their own individual employment earnings, income,
9 gains and/or deductions arising from the assets and debts awarded to
10 them herein, and the parties agree to indemnify and hold harmless the
11 other from any tax penalties or interest related to their individual tax
12 obligation. Should there be any corrections to any previous tax returns,
13 then each respective party shall be solely responsible for any portion of
14 any liability resulting from that party's respective income.
15

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

21 NOTICE IS FURTHER GIVEN that under Circular 230 Disclosure:
22 To ensure compliance with United States Treasury Department
23 Regulations, the parties are advised that, unless otherwise expressly
24
25
26
27
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

10
11
12 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
13
14 AND DECREED that the parties further admit and agree that each of
15 them has had the opportunity to discuss with independent tax counselors,
16 other than the attorney of record in the divorce action filed pertaining to
17 the parties, concerning the income tax and estate tax implications and
18 consequences with respect to the agreed upon division of properties and
19 indebtedness, and SHELLY BOOTH COOLEY, and THE COOLEY LAW
20 FIRM and REGINA M. MCCONNELL and MCCONNELL LAW, LTD.,
21 were not expected to provide and, in fact, did not provide tax advice
22 concerning this Decree of Divorce.
23
24
25
26
27
28

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

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

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

...

...

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 **M. EXECUTION OF NECESSARY DOCUMENTS**

19 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
20
21 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
22 shall execute any and all legal documents, certificates of title, bills of sale,
23 stock transfers, deeds or other instruments or documents necessary in
24 order to effectuate transfer of any and all interest either may have in and
25
26
27
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 **N. ACCEPTANCE OF DECREE AND ADVICE OF COUNSEL**

24 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED
25 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
26 agree that they each have had a reasonable opportunity to seek the advice
27
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 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
10 further acknowledge that each party has become sufficiently acquainted
11 with the other's earnings, property and financial obligations listed herein,
12 and, to the extent requested, have had a reasonable opportunity to obtain
13 knowledge of the property and financial obligations of the community
14 and/or of the other party, and to the extent that they have not availed
15 themselves of the opportunity to obtain such knowledge, each party
16 expressly waives the right to further disclosure thereof; that they each
17 have ascertained and weighed all of the facts, conditions and
18 circumstances likely to influence their judgement herein; that all matter
19 embodied herein, as well as all questions pertinent hereto have been
20 satisfactorily explained; they that have individually given due
21 consideration to such matters and questions; that, individually, each party
22 clearly understands and consents to all of the provisions herein; that each
23
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 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
10 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
11 further acknowledge that the parties' counsel have undertaken neither
12 discovery nor investigation to determine or confirm the nature, extent, or
13 valuation of the assets and obligations of the community and/or of each
14 party. DAVID JOHN ROSE and SARAH JANEEN ROSE agree to
15 indemnify and hold Counsel harmless from liability relating to the
16 valuation of community and/or separate property, debts and/or the herein
17 division of property and debts. DAVID JOHN ROSE and SARAH
18 JANEEN ROSE also acknowledge and agree that each of them has
19 independently obtained sufficient information necessary for them to
20 individually determine, to their satisfaction, the nature, extent, and/or
21 valuation of the subject property and debts. SARAH JANEEN ROSE
22 further acknowledges and agrees that he has not relied on any
23
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**

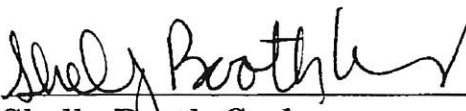
14 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,
15 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE
16 expressly agree that this Decree of Divorce constitutes a just and equal
17 distribution of the community assets and liabilities as they are known
18 today and amply addresses the contingencies 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”

Steven D. Grierson

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,

11 vs.

12 SARAH ROSE,

13 Defendant.

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

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 . . .

27 . .

28 . . .

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 holiday weekend and continues until 9:00 a.m. (or		
2	return to school) on the first weekday following the holiday.		
3			
4	<u>Father's Day:</u> Father's Day shall be defined as the third Sunday in June and shall begin Sunday at 9:00 a.m. and conclude the morning following	Father	Father
5	Father's Day at 9:00 a.m. (or return to school).		
6	<u>Independence Day:</u> This holiday shall be defined as July 4 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 July 4 th and continue until July 5 th at 9:00 a.m.	Mother	Father
7			
8			
9			
10	<u>Labor Day:</u> This holiday shall be defined as the first Monday in September 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
11			
12			
13			
14	<u>Nevada Day:</u> This holiday shall be defined as the last Friday in October and shall begin at 3:00 p.m. (or recess of school) on the Thursday preceding the holiday weekend and continues until 9:00 a.m. (or return to school) on the first weekday following the holiday.	Father	Mother
15			
16			
17	<u>Halloween:</u> Halloween shall be defined as beginning on October 31 st at 9:00 a.m. and concludes November 1 st at 9:00 a.m.	Father	Mother
18			
19	<u>Veterans' Day:</u> This holiday shall be defined as 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.	Father	Mother
20			
21			
22			
23			
24	<u>Thanksgiving and Family Day:</u> This holiday shall 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.	Mother	Father
25			
26			
27			
28	<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 25th, the parties shall exchange the children on December 26th 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).

First Period/Christmas Day (December 25th)

Mother

Father

Second Period/New Year's Day (January 1st)

Father

Mother

Children's Birthdays: 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

Parents' Birthdays: 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 26th. Mother's birthday is August 17th.

Vacations: 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
3 the child, and the relocating parent desires to take the child with him
4 or her, the relocating parent shall, before relocating:

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

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

9 2. The court may award reasonable attorney's fees and costs to the
10 relocating parent if the court finds that the non-relocating parent
11 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 before
15 the court enters an order granting the parent primary physical custody
16 of the child and permission to relocate with the child is subject to the
17 provisions of NRS 200.359.

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

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

27 (a) The parties may agree, and the court shall include in the order for
28 custody of the child, that the United States is the country of habitual
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

...

...

...

...

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.

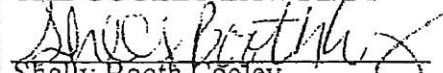
5 

6 SARAH ROSE
7 Defendant

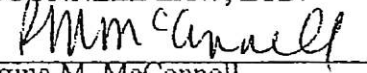


DAVID ROSE
Plaintiff

8 THE COOLEY LAW FIRM

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

McCONNELL LAW, LTD.


Regina M. McConnell
Nevada Bar No. 8029
9017 S. Pecos Road, Suite 4445
Henderson, Nevada 89074
Attorneys for Plaintiff,
DAVID ROSE

13

14

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

16


17

18


District Court Judge *ALC*

19 Respectfully Submitted:

20 THE COOLEY LAW FIRM

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

25

26

27

28

State of Nevada
County of Clark

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


Notary Public 10/11/17

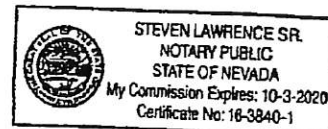


Exhibit “B”

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

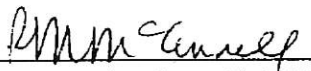


DAVID ROSE
Dated: 3-23-18

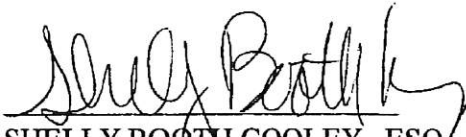


SARAH ROSE
Dated: 03/23/2018

Approved as to Form and Content:



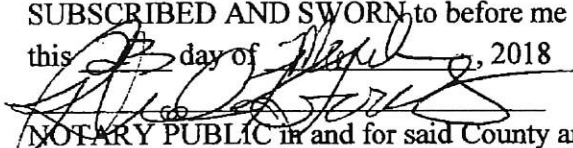
REGINA M. McConnell, ESQ.
Counsel for David Rose



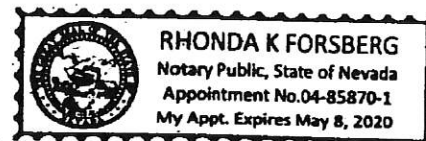
SHELLY BOOTH COOLEY, ESQ.
Counsel for Sarah Rose

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.

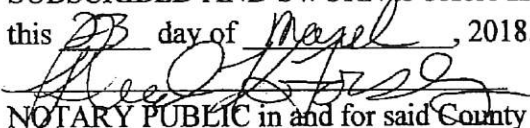
SUBSCRIBED AND SWORN to before me
this 23 day of April, 2018


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

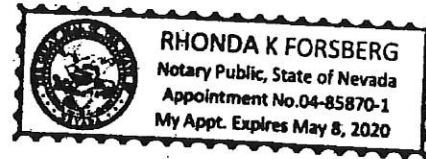


Exhibit “C”

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

Plaintiff,
vs.

Case No: _____
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
15

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.
26
27
28

1 8. Pursuant to EDCR 5.301, you will not discuss any of the court issues or
2 proceedings with the minor children; this includes showing them any part of the
3 pleadings or attachments/exhibits (including audio and video) thereto; you will
4 take every precaution to secure copies of pleadings safely away from the eyes of
5 the children at all times. This means all evidence of litigation generated *on your*
6 *side* and from the other party's side.
7

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

15 10. Neither party shall interfere with the other party's contact with the
16 minor children, including but not limited to telephone, email, social networking
17 contacts, etc.; where telephone/video conferencing is part of your parent contact
18 you may not take a smart phone or iPad from a child as a means of discipline
19 when a child uses this technology to contact the non-residential parent. You must
20 maintain a device accessible to the child(ren) charged or with accessible charger
21 at all times, absent a Court Order otherwise.
22
23
24
25
26
27
28

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.
25
26
27
28

1 16. Except as modified herein, all other court orders remain in full force
2 and effect.
3

4 **POSSIBLE SANCTIONS**

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

13 DATED this _____ day of _____, 20____.
14
15

16 _____
17 **CHERYL B. MOSS**
18 **DISTRICT COURT JUDGE**
19 **FAMILY DIVISION DEPT. I**
20
21
22
23
24
25
26
27
28

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.

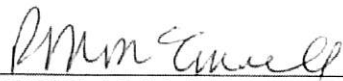
///

///

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 25ⁿ 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**

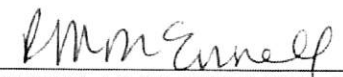
13 TO: SARAH ROSE, Defendant; and

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 7 II. LEGAL ARGUMENT

8 A. THE DECREE MUST BE SET ASIDE BASED UPON MISTAKE BECAUSE THE PARTIES 9 DID NOT AGREE

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

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
judgement 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
28

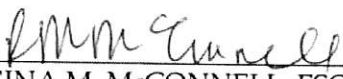
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

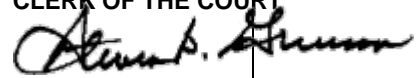
The total filing fee for the motion/opposition I am filing with this form is:

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

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

Signature of Party or Preparer *pmcneel*

TAB 9



OPPS

JAMES L. EDWARDS, ESQ.

Nevada Bar No. 4256

COHEN JOHNSON PARKER EDWARDS

375 E. Warm Springs Road, Suite 104

Las Vegas, NV 89119

702.823.3500 (Office)

702.823.3400(Facsimile)

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,

Plaintiff

v.

REGINA MCCONNELL, ESQ. an individual,
MCCONNELL LAW LTD., a Nevada Limited
liability company; SHELLY BOOTH COOLEY,
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

**OPPOSITION TO 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).**

and

**OPPOSITION TO DEFENDANTS REGINA MCCONNELL, ESQ. AND MCCONNELL
LAW LTD'S JOINDER TO 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).**

I.

INTRODUCTION

Plaintiff DAVID JOHN ROSE (hereinafter D. ROSE), by and through his counsel of record, COHEN JOHNSON PARKER EDWARDS, and James L. Edwards, Esq. files this OPPOSITION TO 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). Plaintiff D. Rose also objects to the joinder filed by the MCCONNELL parties.

This case is premised on the various defendants' legal malpractice, breach of the covenant of good faith and fair dealing, civil conspiracy and breach of contracts. The matters of issue involve matters, which admittedly are important to the parties, but have little significance to the population at large. The

II.

FACTUAL BACKGROUND

Plaintiff DAVID JOHN ROSE retained Defendant REGINA MCCONNELL and MCCONNELL LAW, LTD. (R. MCCONNELL or the MCCONNELL DEFENDANTS) to represent him in a marital dissolution action (Case No. D-17-547250-D). His then wife, SARAH JANEEN ROSE (S. ROSE) hired fellow defendants SHELLEY BOOTH COOLEY and the COOLEY LAW FIRM.

A mediation between the parties was held on March 23, 2018. The purpose of the mediation was to divide community property, including division of the community assets arising from Plaintiff D. ROSE'S enrollment in the Public Employees Retirement System (PERS).

1 During the mediation, S. ROSE raised the issue of survivorship benefits and
2 asked Plaintiff to name her as the survivor beneficiary. Survivor benefits are not an
3 asset of the community; thus, S. ROSE had no right to them. Plaintiff D. ROSE refused
4 to grant survivor benefits to S. ROSE. The parties were otherwise able to reach a
5 settlement, and the mediator memorialized the settlement in a Memorandum of
6 Understanding (MOU). The MOU is attached hereto as **Exhibit 1 to Declaration of**
7 **James L. Edwards.**

8 After the MOU was executed, Defendant COOLEY (S. ROSE's attorney) drafted
9 a Decree of Divorce, the terms of which were to mirror those of the MOU. A copy of the
10 Decree of Divorce is attached hereto as **Exhibit 2, to Declaration of James L.**
11 **Edwards..** The terms did not match the MOU, however. The Decree added language
12 to the division of the PERS benefits to include survivor benefits to Defendant S.ROSE if
13 she were to outlive PLAINTIFF D. ROSE. The additional language reads:
14

15 b) One-half of the community portion, as defined within Nevada law as articulated
16 in Gemma v. Gemma, 105 Nev. 458 (1989), and Fondi v. Fondi, 106 Nev. 856
17 (1990), in DAVID JOHN ROSE's Las Vegas Metropolitan Police Department
18 Public Employees' Retirement System of Nevada Pension benefits, said pension
19 benefits to be divided pursuant to a Qualified Domestic Relations Order
20 ("QDRO"), **based upon a selection of Option 2 being made at the time of**
retirement so as to name S. ROSE JANEEN ROSE as the irrevocable
survivor beneficiary of DAVID JOHN ROSE' pension benefits upon death, to
divide said retirement account.

21 [Emphasis added]. The MOU was referred to in, and attached to, the Decree of
22 Divorce as Exhibit B. *Id.*

23 Defendant MCCONNELL advised Plaintiff to sign it, which he did. Defendant
24 MCCONNELL also told Plaintiff that she would review the Decree for accuracy before
25
26
27
28

1 returning to Defendant COOLEY. Defendant MCCONNELL signed the Decree and sent
2 it back to Ms. COOLEY. The divorce decree was filed, and noticed, on April 11, 2018.

3
4 Sometime thereafter, Defendant MCCONNELL realized her error in advising
5 Plaintiff to sign the Decree of Divorce as drafted by Ms. COOLEY. Accordingly, on April
6 15, 2018, Defendant MCCONNELL filed a *Motion to Set Aside the Paragraph Regarding*
7 *Survivor Benefits in the Decree of Divorce Based Upon Mistake*. A copy of said motion
8 is attached hereto as **Exhibit 3 to Declaration of James L. Edwards**. and is
9 incorporated herein by this reference.

10 Defendant MCCONNELL has admitted her negligence. Exhibit "3." Specifically,
11 she wrote,

12
13 Unfortunately, upon a later reading of the Decree, it came to undersigned
14 counsel's attention that Sarah had included an award of the PERS survivor
benefit option, even though it was never agreed upon.

15 See Exhibit 3, Page 3, lines 22 – 24.

16 Defendant MCCONNELL went on to write,

17 Further, the Decree states that David is awarded one-half of the community
18 portion of his LVMPD pension pursuant to Gemma v Gemma and Fondi v Fondi
19 and based upon a selection of Option 2 being made at the time of retirement so
20 as to name Sarah as the irrevocable survivor beneficiary. This was not included
in the Memorandum because it was not agreed upon by the parties at the time of
the mediation.

* * *

21 Unfortunately, when reviewing the Decree, counsel inadvertently did not see that
22 the option for survivor benefits was listed and awarded to Sarah.

23 *Id.* at pages 6, lines 3 – 4.

24 Defendant S. ROSE admitted in court on January 27, 2020 that she and Plaintiff
25 did not agree at mediation that she would receive survivor benefits from the pension

1 account. She has also stated to the Plaintiff that his “second signature” and attorneys
2 mistake would cost him. See, Unsworn Declaration of James L. Edwards.

3 Plaintiff D. ROSE has set forth in a declaration under penalty of perjury that he
4 “never agreed to give Sarah any portion of [his] survivor benefits from [his] pension.”

5 III.

6 LEGAL ARGUMENT

7 Neither defendant S. ROSE nor the MCCONNELL defendants are entitled to the
8 Anti-SLAPP relief or dismissal pursuant to NRCP 12(b)(1) or 12(b)(5). Defendants do
9 not establish the “public concern” requirement for special motion Anti-SLAPP dismissal.
10 Furthermore, the allegations in the complaint involve activities not associated with any
11 statements involving free speech. Lastly, discovery has yet to be undertaken, and
12 therefore, questions of fact persist.
13

14 A. NEVADA’S ANTI-SLAPP STATUTE IS NOT APPLICABLE

15 Defendant S. ROSE claims she is entitled to Anti-SLAPP protections pursuant to
16 NRS 41.660. The MCCONNELL Defendants have joined the motion. Nevada Revised
17 Statutes 41.660(2)(3) provides in pertinent part:

18
19 2. A special motion to dismiss must be filed within 60 days after service of the
20 complaint, which period may be extended by the court for good cause shown.

21 3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:
22 (a) Determine whether the moving party has established, by a preponderance of
23 the evidence, that the claim is based upon a good faith communication in
24 furtherance of the right to petition or the right to free speech in direct connection
25 with an issue of public concern. . .

26
27 Nevada Revised Statute 41.637 gives a variety definitions of what good faith
28 definition is. The one at play in this case is NRS 41.637(3), which reads:

1 “Good faith communication in furtherance of the right to petition or the right to
2 free speech in direct connection with an issue of public concern” means any:

3 . . .

4 **3.** Written or oral statement made in direct connection with an issue under
5 consideration by a legislative, executive or judicial body, or any other
6 official proceeding authorized by law; ...

7 which is truthful or is made without knowledge of its falsehood.

8 Defendants’ motion and joinder fails for at least three reasons: (1) Defendants
9 cannot show the communication is an issue of public concern; (2) the complaint is
10 based on acts not communications; and (3) it is alleged that defendant knew the
11 statement regarding the survivor benefits was false.

12 **1. *This does not involve a case of public concern.***

13 This case is about legal malpractice, breaches of contracts, civil conspiracy and
14 breach of the covenant of good faith and fair dealing. It began as a private divorce
15 between two private citizens. An issue arose regarding whether survivor benefits would
16 go to S. ROSE upon D. ROSE’S passing. Out of that disagreement, legal malpractice
17 was committed, contracts were breached, parties conspired, and there was the breach
18 of the covenant of good faith and fair dealing.

19
20 The Nevada Supreme Court adopted guidelines on determining whether
21 something qualifies as a “public interest” under NRS 41.637. In *Coker v. Sassone*, 432
22 P.3d 746, 750-51 (Nev. 2019) The Supreme Court stated:

23 (1) "public interest" does not equate with mere curiosity;

24 (2) a matter of public interest should be something of concern to a substantial
25 number of people; a matter of concern to a speaker and a relatively small specific
26 audience is not a matter of public interest;

1 (3) there should be some degree of closeness between the challenged
2 statements and the asserted public interest—the assertion of a broad and
3 amorphous public interest is not sufficient;

4 (4) the focus of the speaker's conduct should be the public interest rather than a
5 mere effort to gather ammunition for another round of private controversy; and

6 (5) a person cannot turn otherwise private information into a matter of public
7 interest simply by communicating it to a large number of people.

8 *Id.* at 750-51. (citing *Shapiro v. Welt*, 133 Nev. 35, 39-40, 389 P.3d 262, 268 (2017))
9 (quoting *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957,
10 968 (N.D. Cal. 2013)). Although this analysis refers to what a “public interest” is, it also
11 should apply to determine whether something is a “public concern.

12 It is not clear what public concern that the defendants think that granting the Anti-
13 SLAPP motion would protect, but Plaintiff submits that a private divorce dealing with
14 survivor benefits is one.

15 **2. Plaintiff’s lawsuit seeks to recover damages for actions unrelated to**
16 **communication.**

17 Defendant MCCONNELL erred. She allowed her client, Plaintiff, to sign a a
18 document containing language he did not agree too. She has already admitted in court.

19 Plaintiff seeks damages from the Defendants S.ROSE and the COOLEY
20 defendants for their conspiracy to add language that Plaintiff had not agreed to the
21 Decree of Divorce. Its not the words used by Defendants, rather Plaintiff’s lawsuit seeks
22 recovery form the Defendants for their actions.
23

24 . . .

25 . . .

1 **3. Defendant S. ROSE knows that her statements are not true.**

2 It would be unreasonable construction of a statute to afford Anti-SLAPP
3 protection to a Defendant making false statement. Plaintiff submits that is what would
4 happen in this case if defendants' motion is granted. First, defendant has admitted in
5 Court that she and Plaintiff never agreed to her receiving survivor benefits from
6 Plaintiff's pension. Second, Defendant S. Rose has also told plaintiff that his attorneys
7 carelessness and his second signature would cost him. The obvious inference is that he
8 has fallen into her trap. She is not trying to protect he freedom of communication. Her
9 actions and admissions indicate that S. ROSE is just trying to obtain money.

10 **B. DEFENDANTS NOT ENTITLED TO 12(b) PROTECTION**

11 Defendant's seek dismissal based on a variety of basis, most of which do not
12 have merit.

13
14 **1. This Court has jurisdiction over this matter.** As state before, this case is about
15 malpractice, breach of contract, civil conspiracy and breach of the covenant of good
16 faith and fair dealing. Defendants have argued the the family court has jurisdiction over
17 this case. The matters listed above are not matters for the Family Court. In fact the
18 Clark County website states:

19 The Family Court helps people with divorce, annulment, child custody, visitation
20 rights, child support, spousal support, community property division, name
21 changes, adoption, and abuse and neglect."

22 <http://www.clarkcountycourts.us/departments/judicial/family-division/>. Although the
23 divorce case was the initial spring pad for the instant litigation, it is not the place for
24 malpractice and breach of contract cases.

1 **2. The Attorney/Client Relationship is not necessarily the same as Principal/**
2 **Agent relationship.**

3 Most jurisdictions recognize that the attorney/client as principal/agent issue is complex.
4 The Nevada Supreme Court, however, did recently address this issue in *Dezzani v. Kern &*
5 *Assocs.*, 412 P.3d 56, 2018 Nev. LEXIS 14, Nev. Adv. Rep. 9, 2018 WL 1103507 (2018). The
6 Court in *Dezzani* thoroughly analyzed when the Attorney-Client (AC) relationship is and when it
7 isn't considered an Agent-Principal (AP) relationship. In short, the Court said "Public policy
8 does not support including attorneys as agents under NRS 116.31183." *Id.* at 61. "Considering
9 NRS Chapter 116 as a whole and giving harmonious effect to both NRS 116.31183 and NRS
10 116.31164, we conclude that the Legislature did not intend to use the term "agent" to include
11 attorneys." *Id.* at 62-63. "Based on the unique characteristics of an attorney-client relationship
12 that distinguish it from a general agent-principal relationship, we decline to [say they are
13 synonymous]." *Id.* at 61.

14 Moreover, whether the COOLEY defendants may have been acting for their own benefit
15 is a question of fact. Discovery can address this.

16 **3. The Parol Evidence Rule is not applicable.**

17 The Parol Evidence Rule is not applicable here. The rule prohibits a court from considering
18 evidence outside of the four corners of the contract in order to interpret the meaning of the
19 contract. There are exceptions to this rule in which a court will consider outside evidence to
20 interpret a contract:

- 21 (a) To resolve ambiguities in the contract; (*Lowden Inv. Co. v. Gen. Elec. Credit Co.*, 103
22 Nev. 374, 741 P.2d 806 (1987)).
23
24
25
26
27
28

1 (b) When the contract is silent as to a particular matter; (*Golden Press v. Pac. Freeport*
2 *Warehouse*, 97 Nev. 163, 625 P.2d 578 (1981)).

3 (c) When the contract was fraudulent; (*Sierra Diesel Injection Serv. v. Burroughs Corp., Inc.*,
4 651 F.Supp. 1371, 1377 (D. Nev. 1987)).

5 (d) When the contract fails to specify what the consideration received would be; (*Dixon v.*
6 *Miller*, 43 Nev. 280, 285, 184 P. 926, 927 (1919)).

7
8 First, the MOU was referenced and attached as an exhibit in the Decree of Divorce (DOD),
9 so the MOU is considered to be within the four corners of the contract and should not be
10 considered outside evidence. Second, because of the MOU is part of the DOD, the meaning of
11 the DOD becomes ambiguous. The DOD states that Sarah Janeen Rose (SJR) has an interest in
12 Mr. Rose's PERS account whereas the MOU states that SJR does not have an interest in the
13 account. Because both terms are considered to be part of the same document and are
14 contradictory, the term of the DOD is ambiguous. Therefore, under *Lowden*, the court may
15 consider outside evidence, such as statements made during the settlement negotiations, to
16 determine the meaning of the DOD.

18 **4. Attorneys Fees**

19 Plaintiff D. ROSE respectfully requests an award of reasonable attorneys fees for having to
20 defend this unfounded Special

21 ...

22 ...

23 ...

24 ...

25 ...

1 Motion to Dismiss. The Anti-SLAPP statutes were not intended to cover situations like these.

2 DATED: July 28, 2020.

3 **COHEN JOHNSON PARKER EDWARDS**

4
5 by: /s/ James L. Edwards

6 JAMES L. EDWARDS, ESQ.

7 Nevada Bar No. 4256

8 375 E. Warm Springs Road, Suite 104

9 Las Vegas, NV 89119

702.823.3500 (Office)

702.823.3400(Facsimile)

Attorneys for Plaintiff

10 **CERTIFICATE OF SERVICE**

11 I certify that I am an employee of Cohen Johnson Parker Edwards and that on the 28th day of

12 July, 2020, I served the foregoing opposition by mandatory electronic service through the eighth

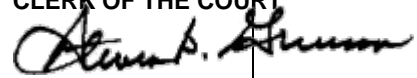
13 judicial district courts electronic filing system to the to all parties listed there.

14
15 by: /s/ James L. Edwards

16 JAMES L. EDWARDS, an employee of

17 COHEN JOHNSON PARKER EDWARDS

TAB 10



OPPS

JAMES L. EDWARDS, ESQ.

Nevada Bar No. 4256

COHEN JOHNSON PARKER EDWARDS

375 E. Warm Springs Road, Suite 104

Las Vegas, NV 89119

702.823.3500 (Office)

702.823.3400(Facsimile)

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,

Plaintiff

v.

REGINA MCCONNELL, ESQ. an individual,
MCCONNELL LAW LTD., a Nevada Limited
liability company; SHELLY BOOTH COOLEY,
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

**DECLARATION OF
JAMES L. EDWARDS**

**OPPOSITION TO 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).**

and

**OPPOSITION TO DEFENDANTS REGINA MCCONNELL, ESQ. AND MCCONNELL
LAW LTD'S JOINDER TO 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).**

UNSWORN DECLARATION OF JAMES L EDWARDS

Pursuant NRS 53.045, I declare under penalty of perjury that the following is true and correct:

1. I am over 18 years of age and competent to Test of the matters..

2. I am an attorney license to practice in the state of Nevada

3. I have read the memorandum of understanding attached hereto exhibit 1. I did not see any indication in the memorandum of understanding that the defendant would receive any survivor benefits.

4. I have seen the Decree of Divorce at issue in this case. It is attached as Exhibit 2.

5. I have reviewed the document filed by the McCONNELL defendants entitled Motion To Set Aside the Paragraph regarding Survivor benefits in the Decree of Divorce. It is attached as Exhibit 3.

6. I have seen video footage of the family court proceedings where Defendant S. ROSE admits that she and her then husband had not agreed on the survivor benefits. I have also heard a recording that was played in court where in a woman, who is purported to be S. ROSE, states that Plaintiff's second signature is going to cost him.

DATED: July 28, 2020.

COHEN JOHNSON PARKER EDWARDS

by: /s/ James L. Edwards
JAMES L. EDWARDS, ESQ.

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 7th day of June, 2021, 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*

/s/ Sharon Murnane
An Employee of BAILEY ❖ KENNEDY