

**Case No. 81859**

---

IN THE SUPREME COURT OF THE STATE OF NEVADA

---

Electronically Filed  
Jun 07 2021 06:03 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 II 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 II OF II**

#### **TABLE OF CONTENTS**

<b>Document Title</b>	<b>Date</b>	<b>Vol. No.</b>	<b>Tab No.</b>	<b>Page Nos.</b>
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
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
Commissioner's Decision on Request for Exemption	8/07/2020	II	13	331-332

<b>Document Title</b>	<b>Date</b>	<b>Vol. No.</b>	<b>Tab No.</b>	<b>Page Nos.</b>
Minute Order Re: All Pending Motions	8/11/2020	II	14	333-334
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
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
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 Motion for Attorney's Fees	9/10/2020	II	18	365-380
Defendant Sarah Janeen Rose's Notice of Appeal	9/25/2020	II	19	381-382
Defendant Sarah Janeen Rose's Case Appeal Statement	9/25/2020	II	20	386-393

<b>Document Title</b>	<b>Date</b>	<b>Vol. No.</b>	<b>Tab No.</b>	<b>Page Nos.</b>
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
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
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
Reply in Support of Defendant Sarah Janeen Rose's Motion for Attorney's Fees	10/9/2020	II	25	423-430
Minute Order Re: Defendant Sarah Janeen Rose's Motion for Attorney's Fees	10/15/2020	II	26	431
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
Order Granting Defendant Sarah Janeen Rose's Motion for Attorney's Fees	10/26/2020	II	28	440-444
Notice of Entry of Order Granting Defendant Sarah Janeen Rose's Motion for Attorney's Fees	10/27/2020	II	29	445-452
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



<b>Document Title</b>	<b>Date</b>	<b>Vol. No.</b>	<b>Tab No.</b>	<b>Page Nos.</b>
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
Status Report	4/29/2021	II	32	460-462
Minute Order Re: Status Check: Family Court Proceedings	4/30/2021	II	33	463

## **JOINT APPENDIX**

### **INDEX**

<b>Document Title</b>	<b>Date</b>	<b>Vol. No.</b>	<b>Tab No.</b>	<b>Page Nos.</b>
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

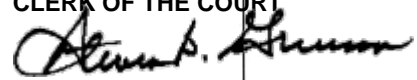
<b>Document Title</b>	<b>Date</b>	<b>Vol. No.</b>	<b>Tab No.</b>	<b>Page Nos.</b>
Defendant Sarah Janeen Rose's Reply in Support of her Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)	10/22/2020	II	27	432-439
Defendant Sarah Janeen Rose's Reply in Support of her Special Motion to Dismiss 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

<b>Document Title</b>	<b>Date</b>	<b>Vol. No.</b>	<b>Tab No.</b>	<b>Page Nos.</b>
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

<b>Document Title</b>	<b>Date</b>	<b>Vol. No.</b>	<b>Tab No.</b>	<b>Page Nos.</b>
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

<b>Document Title</b>	<b>Date</b>	<b>Vol. No.</b>	<b>Tab No.</b>	<b>Page Nos.</b>
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 11**



1 **OPPS**

2 JAMES L. EDWARDS, ESQ.

3 Nevada Bar No. 4256

4 **COHEN JOHNSON PARKER EDWARDS**

5 375 E. Warm Springs Road, Suite 104

6 Las Vegas, NV 89119

7 702.823.3500 (Office)

8 702.823.3400(Facsimile)

9 *Attorneys for Plaintiffs*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 DAVID JOHN ROSE, an individual,

13 Plaintiff

14 v.

15 REGINA MCCONNELL, ESQ. an individual,  
16 MCCONNELL LAW LTD., a Nevada Limited  
17 liability company; SHELLY BOOTH COOLEY,  
18 an individual; THE COOLEY LAW FIRM, a  
19 Nevada Professional Limited Liability  
20 Company; SARAH JANEEN ROSE, an  
21 individual; DOE INDIVIDUALS I through X  
22 and ROE CORPORATIONS XI through XX,  
23 Defendants.

CASE NO.: A-20-815750-C

DEPT. NO.: 11

**EXHIBITS**

24 **OPPOSITION TO DEFENDANT SARAH JANEEN ROSE'S SPECIAL MOTION TO**  
25 **DISMISS PURSUANT TO NRS 41.660 (ANTI-SLAPP), OR IN THE ALTERNATIVE**  
26 **MOTION TO DISMISS PURUSANT TO NRCP 12(b)(1) AND NRCP 12(b)(5).**

27 and

28 **OPPOSITION TO DEFENDANTS REGINA MCCONNELL, ESQ. AND MCCONNELL**  
**LAW LTD'S JOINDER TO DEFENDANT SARAH JANEEN ROSE'S SPECIAL**  
**MOTION TOD DISMISS PURSUANT TO NRS 41.660 (ANTI-SLAPP), OR IN THE**  
**ALTERNATIVE MOTION TO DISMISS PURUSANT TO NRCP 12(b)(1) AND NRCP**  
**12(b)(5).**



# 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.

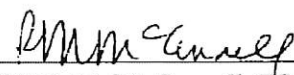
9. Each party acknowledges that they have been represented by counsel in the negotiation and preparation of this agreement, and voluntarily enters the agreement with full understanding of its terms. This agreement may be executed in counterparts.


AFFIRMED AND AGREED

  
\_\_\_\_\_  
DAVID ROSE  
Dated: 3-23-18

  
\_\_\_\_\_  
SARAH ROSE  
Dated: 03/23/2018

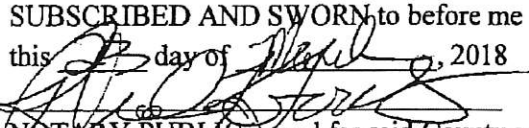
Approved as to Form and Content:

  
\_\_\_\_\_  
REGINA M. McConnell, ESQ.  
Counsel for David Rose

  
\_\_\_\_\_  
SHELLY BOOTH COOLEY, ESQ.  
Counsel for Sarah Rose

STATE OF NEVADA       )  
                                  ) ss:  
COUNTY OF CLARK     )

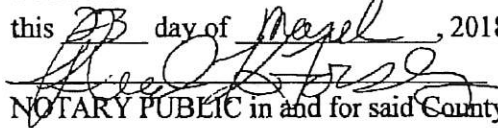
DAVID ROSE did appear before me on the date set forth below, provided appropriate identification, and did sign the foregoing Marital Settlement Agreement as acknowledgement and agreement with its terms.

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  
18 **Plaintiff,**

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

19 vs.

20 **SARAH JANEEN ROSE,**  
21  
22 **Defendant.**

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

23 **STIPULATED DECREE OF DIVORCE**

24 The above captioned matter having come before this Honorable  
25 Court upon the Complaint for Divorce of the Plaintiff, DAVID JOHN  
26 ROSE, represented by his counsel of record, Regina M. McConnell, and  
27 McConnell Law Group, Ltd., and Defendant, SARAH JANEEN ROSE,  
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 17<sup>th</sup> 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  
17 DAVID JOHN ROSE's current address is 8059 Torremolinos  
18 Avenue, Las Vegas, Nevada. SARAH JANEEN ROSE's current address  
19 is 63 Wyoming Avenue, Henderson, Nevada.  
20

21  
22 The Court FINDS that DAVID JOHN ROSE is age 32, and is  
23 employed on a full-time basis with Las Vegas Metropolitan Police  
24 Department as a Sergeant. SARAH JANEEN ROSE is age 29, and is  
25 employed on a full-time basis with Academica-Doral Academy Pebble  
26 Campus.  
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  
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  
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  
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  
7       constructive child support arrears. Said constructive child support arrears  
8       shall be payable in monthly payments of \$270.00 for a period of 48 months  
9  
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 (½) 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  
9 d. Sharing of Insurance Information Required: The  
10 party providing insurance coverage for the child  
11 has a continuing obligation to provide insurance  
12 information including, but not limited to, copies of  
13 policies and changes thereto as they are received,  
14 claim forms, preferred provider lists (as modified  
15 from time to time), and identification card. The  
16 failure of the insuring party to timely supply any of  
17 the above items to the other party which results in  
18 the claim for treatment being denied by the  
19 insurance company in whole or in part will result  
20 in the amount which would have been paid by the  
21 insurance policy being paid by the insuring party.

22 e. Reimbursement For Out-of-Pocket Expenses: A  
23 party who receives a written request for  
24 contribution for an out-of-pocket health care  
25 expense incurred by the other party must pay his  
26 or her share of the out-of-pocket expense to the  
27 paying party within thirty (30) days of receipt of  
28 the written request for contribution. The court  
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  
the payment to the other party within seven (7)  
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  
22

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

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

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

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

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

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



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

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

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

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

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

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

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



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

- 9  
10                   (a) The names, dates of birth, social security numbers  
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.

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

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

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

16  
17 d) All right, title and interest in the 2015 Dodge Challenger  
18 automobile in her possession, if any, subject to any  
19 encumbrances thereon. Both parties names are associated with  
20 the loan on said automobile. As such, DAVID JOHN ROSE  
21 shall have six (6) months to refinance said loan, removing  
22 SARAH JANEEN ROSE's name from said loan obligation.  
23

24  
25 e) Any and all bank or financial institution accounts in his  
26 name alone.  
27

28 g) All personal property and jewelry in his possession.

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

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

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

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                   ROSE as of the parties separation, which occurred on  
14                   02/21/2017.  
15  
16  
17

18           **E. Alimony:**

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

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



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

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    **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     all right to share in the estate of the other by the laws of succession, and  
8     said parties hereby release one to the other all rights to inherit from the  
9     other. Furthermore, said parties hereby renounce, one to the other, all  
10    right to be administrator or administratrix, executor or executrix, of the  
11    estate of the other, and said parties hereby waive any and all right to the  
12    estate or any interest in the estate of the other by way of inheritance, or  
13    otherwise, for family allowance therein or therefrom, to a probate or other  
14    homestead upon any property of the other, and to have set aside to him or  
15    her any property of the other exempt from execution, and from the date  
16    of this Decree of Divorce to the end of the world, said waiver by each in  
17    the estate of the other party shall be effective, and said parties shall have  
18    all the rights of single persons and maintain the relationship of such  
19    toward each other.  
20  
21  
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  
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 **N. ACCEPTANCE OF DECREE AND ADVICE OF COUNSEL**

24  
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 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.  
9  
10  
11

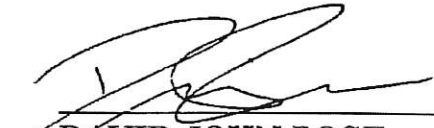
12 **Q. ENTIRE AGREEMENT**

13  
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  
3 contained in an order of a Court of competent jurisdiction.


4 DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

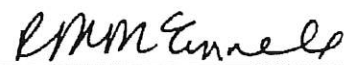
5   
6  
7 SARAH JANEEN ROSE

  
8 DAVID JOHN ROSE

9 THE COOLEY LAW FIRM

MCCONNELL LAW , LTD.

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

  
17 Regina M. McConnell  
18 Nevada Bar No. 4445  
19 9017 S. Pecos Road, 4445  
20 Henderson, Nevada 89074  
21 Attorneys for Plaintiff,  
22 DAVID JOHN ROSE

23  
24  
25 IT IS SO ORDERED this \_\_\_\_ day of APR 09 2018, 2018.

26  
27   
28 DISTRICT COURT JUDGE @

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

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 <sup>th</sup> , the parties shall exchange		
5	the children on December 26 <sup>th</sup> 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 25<sup>th</sup>)</u>	Mother	Father
11	<u>Second Period/New Year's Day (January 1<sup>st</sup>)</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 <sup>th</sup> . Mother's birthday is August		
21	17 <sup>th</sup> .		
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  
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.

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

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

(a) The parties may agree, and the court shall include in the order for  
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

25 ...  
26 ...  
27 ...  
28 ...

# 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.

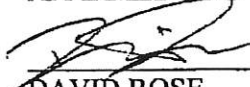
6. The parties shall follow and be subject to Department I's Behavior Order.


7. Sarah is waiving her community waste claim.

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

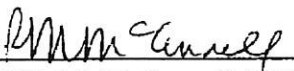
9. Each party acknowledges that they have been represented by counsel in the negotiation and preparation of this agreement, and voluntarily enters the agreement with full understanding of its terms. This agreement may be executed in counterparts.


AFFIRMED AND AGREED

  
\_\_\_\_\_  
DAVID ROSE  
Dated: 3-23-18

  
\_\_\_\_\_  
SARAH ROSE  
Dated: 03/23/2018

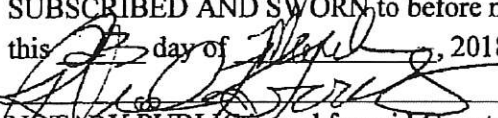
Approved as to Form and Content:

  
\_\_\_\_\_  
REGINA M. McConnell, ESQ.  
Counsel for David Rose

  
\_\_\_\_\_  
SHELLY BOOTH COOLEY, ESQ.  
Counsel for Sarah Rose

STATE OF NEVADA       )  
                                  ) ss:  
COUNTY OF CLARK     )

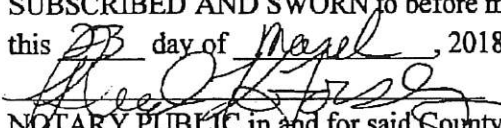
DAVID ROSE did appear before me on the date set forth below, provided appropriate identification, and did sign the foregoing Marital Settlement Agreement as acknowledgement and agreement with its terms.

SUBSCRIBED AND SWORN to before me  
this 23 day of 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 “C”

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

22           7. Neither party shall post, nor shall you allow significant others or family  
23 members on social media to post, including, but not limited to, FaceBook,  
24 Twitter, YouTube, Instagram, LinkedIn, Tumblr, and Google+, any negative or  
25 disparaging allegation against or negative image of the other party or anyone  
26 associated with the other party.  
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

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

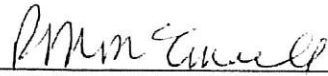
///

///

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 25<sup>n</sup> 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**

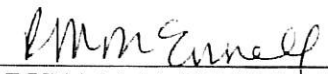
13 TO: SARAH ROSE, Defendant; and

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 25<sup>th</sup> 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  
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 *Kalin 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

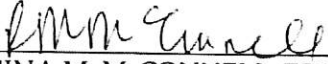
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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 25<sup>th</sup> 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.

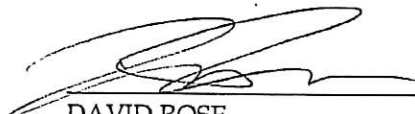
2. That I have read the above and foregoing Motion and know the contents thereof and that the same is true of my own knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

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.

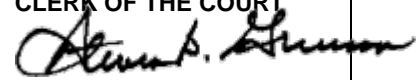
The total filing fee for the motion/opposition I am filing with this form is:

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

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

Signature of Party or Preparer pmcennell

**TAB 12**



**RIS (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  
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)**

Date of Hearing: August 11, 2020

Time of Hearing: 9:00 a.m.

**I. INTRODUCTION**

Put simply, David has failed to meet his burden of producing prima evidence demonstrating he has a “probability of prevailing on” his claims and, in any event, has failed to plead viable claims against Sarah. In fact, David does not even attempt to dispute that his claims are unripe or that his conspiracy to defraud claim fails as a matter of law because it is based on an alleged term (the survivor benefits) that is contradicted by the unambiguous terms of the Divorce Decree. As detailed below, even as to the issues David attempts to address in his Opposition, he fails to demonstrate that he has viable claims for relief. This Court should grant the Motion in its entirety.



1 First, David’s claims are subject to Nevada’s anti-SLAPP statute. David’s contention that  
2 his claims do not involve a “public concern” is immaterial. The statute defines a “[g]ood faith  
3 communication in furtherance of the right to free speech in direct connection with an issue of public  
4 concern” through four separate categories and his claims fit squarely within the category that  
5 protects “[w]ritten or oral statement[s] made in direct connection with an issue under consideration  
6 by a . . . judicial body . . . .” Further, David’s argument that his claims do not concern a  
7 “communication” fails. His claims are based on alleged oral and written communications;  
8 regardless, the anti-SLAPP statute applies to communicative conduct, such as negotiating and  
9 executing settlement agreements.

10 Second, this Court lacks subject matter jurisdiction over David’s claims. As detailed in the  
11 Motion, the Nevada Supreme Court has repeatedly held that where a divorce decree does not  
12 directly provide for the survival of a pre-decree agreement merged into the decree (like the MOU),  
13 that pre-decree agreement is destroyed and the parties’ remedies are limited to those available on  
14 the decree itself (e.g., a motion to set aside the decree). Rather than attempt to distinguish  
15 controlling authority (which he cannot do), David quotes a generalized summary of the Family  
16 Court’s exclusive jurisdiction from its website. The summary does not overrule the Nevada  
17 Supreme Court and, in any event, does not help David’s cause.

18 Third, David’s attempt to save his civil conspiracy claim fails. A lawyer acting within the  
19 scope of the attorney-client relationship cannot civilly conspire with her client as a matter of law.  
20 The case relied upon by David only concerns whether an attorney is an “agent” for a client as  
21 defined by a specific statute not relevant to this matter.

22 Finally, David misapprehends the parol evidence rule. The fact that the MOU is attached to  
23 the Divorce Decree, which contains an integration/merger clause, demonstrates that the Divorce  
24 Decree is the final integrated agreement of the parties and supersedes any prior agreements,  
25 including the MOU.

26 In sum, David’s claims are subject to a special motion to dismiss and he cannot meet his  
27 burden of establishing a probability of prevailing on any of them. Accordingly, Sarah respectfully  
28

1 requests that this Court grant her Motion and award her, pursuant to NRS 41.670(1), her reasonable  
2 attorney’s fees and costs, plus \$10,000.

## 3 II. ARGUMENT

### 4 A. David’s Claims are Subject to the Anti-SLAPP Statute.

#### 5 1. *Sarah is Not Required to Demonstrate that David’s Claims Involve a Case* 6 *of Public Concern—She Need Only Demonstrate that they Fit Within One* 7 *of the Four Statutorily Defined Categories.*

8 David argues that his claims are not subject to the anti-SLAPP Statute because they do not  
9 “involve a case of public concern.” (Opp. at 6:12 – 7:14.) This argument misconstrues the anti-  
10 SLAPP statute.

11 A “[g]ood faith communication in furtherance of the right to free speech in direct  
12 connection with an issue of public concern” is defined by statute into four categories of  
13 communication. *See* NRS 41.637. As explained in the case relied upon by David, if claims fall  
14 within one or more of the categories that they are subject to the anti-SLAPP statute by definition—  
15 the moving party does not need to demonstrate they involve a case of “public concern.” *See Coker*  
16 *v. Sassone*, 135 Nev. 8, 12, 432 P.3d 746, 749 (2019) (“We recently affirmed that a moving party  
17 seeking protection under NRS 41.660 need only demonstrate that his or her conduct falls within one  
18 of four statutorily defined categories of speech, rather than address difficult questions of First  
19 Amendment law.”) (citing *Delucchi v. Songer*, 133 Nev. 290, 299, P. 396 3d 826, 833 (2017)).

20 Thus, Sarah does not have to prove that David’s claims involve a case of “public  
21 concern”—she only needs to demonstrate that his claims are subject to one or more of the four  
22 categories. As demonstrated in the Motion, David’s claims fit squarely into one of the four  
23 statutorily defined categories: “Written or oral statement[s] made in direct connection with an issue  
24 under consideration by a . . . judicial body . . . .” NRS 41.637(3).

25 The case relied upon by David analyzes a different statutory category that protects  
26 “[c]ommunication[s] made in direct connection with an issue of *public interest* in a place open to  
27 the public or in a public forum.” NRS 41.637(4) (emphasis added); *Coker*, 135 Nev. at 12, 432  
28 P.3d at 749 (quoting NRS 41.637(4)). In contrast, the category Sarah is relying on does not require

1 that the communication concern a matter of “public interest.” *Compare* NRS 41.637(3) with NRS  
2 41.637(4).

3 Accordingly, case law analyzing whether a communication concerns a matter of “public  
4 interest” under NRS 41.637(4) has no bearing on whether David’s claims concern communications  
5 subject to NRS 41.637(3).

6 **2. David’s Claims are Based on Written Communications and**  
7 **Communicative Conduct.**

8 David argues that his claims are not subject to the anti-SLAPP statute because they are not  
9 based on “communication.” (Opp’n at 7:15-23.) This argument fails.

10 As explained in the Motion, the anti-SLAPP statute applies to “*communicative conduct*  
11 such as the filing, funding, and prosecution of a civil action.” *See Rusheen v. Cohen*, 128 P.3d 713,  
12 718 (Cal. 2006) (emphasis added); *see also Allstate Ins. Co. v. Belsky*, No. 2:15-cv-02265-MMD-  
13 CWH, 2017 U.S. Dist. LEXIS 224167, at \*10 (D. Nev. Mar. 31, 2017) (finding party’s  
14 “petition[ing] a court for redress” was “an activity which California courts interpreting California’s  
15 corresponding statute have found qualifies as a good faith communication in furtherance of the right  
16 to petition,” and was thus subject to Nevada’s anti-SLAPP statute) (internal quotation marks  
17 omitted); *accord John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 751, 219 P.3d 1276, 1280 (2009)  
18 (affirming district court’s application of Nevada’s Anti-SLAPP statute where it found defendants’  
19 “*actions* were protected activity under the anti-SLAPP statute . . . .”) (emphasis added), *superseded*  
20 *by statute on other grounds Delucchi v. Songer*, 133 Nev. 290, 296, 396 P.3d 826, 831 (2017).

21 Importantly, the California Supreme Court<sup>1</sup> has ruled—in an opinion that has been cited  
22 twice by the Nevada Supreme Court with approval<sup>2</sup>—that claims such as breach of contract and  
23

---

24 <sup>1</sup> As explained in the Motion, the Nevada Supreme Court looks to California case law analyzing  
25 its anti-SLAPP statute because Nevada’s anti-SLAPP statute is substantially similar. *John*, 125 Nev.  
26 at 756, 219 P.3d at 1283 (“When determining whether Nevada’s anti-SLAPP statute falls within this  
27 category, we consider California case law because California’s anti-SLAPP statute is similar in  
28 purpose and language to Nevada’s anti-SLAPP statute.”).

<sup>2</sup> *See Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062, 1069 (2020); *Omerza v. Fore Stars*,  
No. 76273, 2020 Nev. Unpub. Lexis 96, at \*3-4 (Nev. Jan. 23, 2020).

1 fraud arising from the negotiation and execution of settlement documents are subject to anti-  
2 SLAPP. *See Navellier v. Sletten*, 52 P.3d 703, 709 (Cal. 2002) (finding plaintiffs’ claims for breach  
3 of contract and fraud were subject to anti-SLAPP because defendant’s “negotiation and execution  
4 of” the settlement agreement “involved ‘statement[s] or writing[s] made in connection with an issue  
5 under consideration or review by a . . . judicial body’”) (alterations in original) (emphasis added)  
6 (quoting Cal. Civ. Proc. Code § 425.16(e)(2)); *Navarro v. IHOP Props., Inc.*, 36 Cal. Rptr. 3d 385,  
7 391-92 (Cal. Ct. App. 2005) (finding claim that defendant defrauded plaintiff into signing stipulated  
8 judgment was subject to anti-SLAPP); *Dowling v. Zimmerman*, 103 Cal. Rptr. 2d 174, 190 (Cal. Ct.  
9 App. 2001) (finding anti-SLAPP applied to plaintiff’s claims, including a claim for fraud, where  
10 “complaint arose from [defendant’s] acts of negotiating a stipulated settlement . . .”). Notably,  
11 David does not even attempt to distinguish the authority cited in the Motion (because he cannot).

12 As explained in the Motion, the gravamen of David’s claims against Sarah is that she  
13 breached an alleged agreement and defrauded him by “***drafting*** the Decree of a Divorce” with a  
14 term entitling her to survivor benefits and “[s]***ubmitted*** the Decree of Divorce [to the court] so that  
15 its terms become legally enforceable.” (Compl. ¶ 46 (emphasis added).) Sarah’s negotiations with  
16 David, her drafting of the Divorce Decree (through her counsel), and her submission of the Divorce  
17 Decree to the Family Court (through her counsel) are all written and alleged oral statements made  
18 in direct connection with an issue (the Divorce Action) under consideration by a judicial body.  
19 Accordingly, David’s claims against Sarah are based on her “[w]ritten or oral statement[s] made in  
20 direct connection with an issue under consideration by a . . . judicial body,” and are thus subject to  
21 Nevada’s anti-SLAPP statute. *See* NRS 41.637(3); *Navellier*, 52 P.3d at 709.

22 ***3. None of Sarah’s Communications were False.***

23 David contends his claims are not subject to the anti-SLAPP statute because he believes that  
24 Sarah made knowingly false statements by drafting and executing the Divorce Decree which gave  
25 her survivor benefits. (Opp’n at 8:1-10.) Specifically, David argues that Sarah “has admitted in  
26 Court that she and Plaintiff never agreed to her receiving survivor benefits from Plaintiff’s pension”  
27 and that she “told plaintiff that his attorneys [sic] carelessness and his second signature would cost  
28

1 him” (which he contends is proof that he fell into Sarah’s “trap”). (Opp’n at 8:4-8.) These  
2 arguments miss the mark.

3 First, Sarah agrees that she and David did not make any oral agreements as to survivor  
4 benefits at the mediation. (Mot., Ex. A, Decl. Sarah Janeen Rose [“Rose Decl.”], ¶ 8.) Further,  
5 Sarah agrees that the MOU does not address survivor benefits. (Compl. ¶ 15; *id.*, Ex. 1, MOU.)  
6 However, simply because the parties did not make any oral agreements as to survivor benefits did  
7 not preclude them from making agreements in writing (which they did, through the Divorce  
8 Decree). Even assuming Sarah and David had orally expressly agreed that Sarah would not receive  
9 survivor benefits at the mediation (they did not), neither their alleged agreement nor the inclusion of  
10 the survivor benefits in the Divorce Decree are false statements. Sarah and David had the right to  
11 propose and alter terms until the execution of their final integrated agreement (the Divorce Decree).

12 Second, the alleged *post hac* statement by Sarah that David’s “attorneys [sic] carelessness  
13 and his second signature would cost him,” is immaterial. Sarah and David’s divorce proceedings  
14 have been contentious. Indeed, David inappropriately filed this civil litigation against Sarah and  
15 her former divorce counsel—a transparent effort to create leverage against Sarah in the Divorce  
16 Action and to intimidate Sarah’s former counsel, who is scheduled to testify at an evidentiary  
17 hearing on David’s Motion to Set Aside in the near future. Regardless, Sarah’s alleged statement  
18 has no bearing on whether her proposal in the Divorce Decree concerning survivor benefits—*which*  
19 *David accepted*—is a false statement. Plainly, it is not.

20 In sum, Sarah met her initial burden of demonstrating, by a preponderance of the evidence,  
21 that the claims at issue are subject to the anti-SLAPP statute and, as detailed in the Motion and  
22 below, David has utterly failed to demonstrate, with “prima facie evidence,” that he has a  
23 “probability of prevailing on” his claims. *See* NRS 41.660(3)(a), (3)(c).

24 **B. This Court Lacks Subject Matter Jurisdiction Over David’s Claims Against**  
25 **Sarah.**

26 David contends that this Court has subject matter jurisdiction because his claims are “about  
27 malpractice, breach of contract, [and] civil conspiracy . . . .” (Opp’n at 8:13-24.) David’s argument  
28 fails—this Court lacks subject matter jurisdiction over David’s claims against Sarah.

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

20 Because the MOU and any other agreements were merged into the Divorce Decree, David’s  
21 remedies are limited to those available to address the Divorce Decree itself—such as his Motion to  
22 Set Aside currently pending in the Divorce Action. *See Lin*, No. 77351-COA, 2020 Nev. App.  
23 Unpub. LEXIS 241, at \*6 n.4. The Family Court has ***exclusive jurisdiction*** to address the Divorce  
24 Decree. *See NRS 3.223(1)(a); Landreth v. Malik*, 127 Nev. 184, 183, 251 P.3d 163, 169 (2011)  
25 (“[T]he family court division has original and exclusive jurisdiction over matters affecting the  
26 familial unit including divorce . . .”). Thus, this Court lacks subject-matter jurisdiction to address  
27 David’s claims against Sarah.  
28

1 Facing an avalanche of controlling authority from the Nevada Supreme Court, David quotes  
2 a 26-word statement from the “Clark County website,” which appears to provide a general  
3 summary of the types of the cases over which the Family Court has exclusive jurisdiction and notes  
4 that his claims are not among those types. (*Id.* at 8:17-22.) David misapprehends the law. This  
5 Court generally has subject matter jurisdiction over claims of civil conspiracy and breach of  
6 contract. However, this Court does not have subject matter jurisdiction over **David’s** claims against  
7 Sarah for civil conspiracy and breach of contract because those claims are unavailable—David’s  
8 remedies are limited to those available under the divorce decree. *See Vaile*, 128 Nev. at 33 n.7, 268  
9 P.3d at 1276 n.7; *Lin*, No. 77351-COA, 2020 Nev. App. Unpub. LEXIS 241, at \*6 n.4.

10 Because this Court lacks subject matter jurisdiction, David cannot meet his burden to  
11 demonstrate a “probability of prevailing” on his claims and this Court should grant the Motion. *See*  
12 *Barry v. State Bar of Cal.*, 386 P.3d 788, 792 (Cal. 2017).

13 **C. David’s Claims are Unripe.**

14 As explained in the Motion, David’s claims are unripe because they are contingent on the  
15 outcome of the Divorce Matter. If David prevails on his pending Motion to Set Aside the Divorce  
16 Decree, then the claims asserted in this matter will be moot—he will have suffered no damages.  
17 David does not contest this and thus concedes that his claims are unripe. *See* EDCR 2.20(e).

18 **D. David’s Conspiracy Claim Fails as a Matter of Law.**

19 **1. Sarah Cannot Conspire with Cooley as a Matter of Law.**

20 David contends that his conspiracy claim against Sarah and Cooley is viable because the  
21 attorney-client relationship is not “necessarily the same as [the] Principal/Agent relationship” and  
22 because discovery might reveal that Cooley and her law firm “may have been acting for their own  
23 benefit.” (Opp’n at 9:1-17.) These arguments fail.

24 First, as explained in the Motion, a client cannot conspire with her legal counsel who is  
25 acting within the scope of attorney-client relationship. *See Crossroads Partners v. Utah Crossing,*  
26 *Ltd.*, Nos. 98-15673, 98-15674, 1999 U.S. App. LEXIS 22721, at \*10 (9th Cir. Sep. 9, 1999)  
27 (finding, under Nevada law, a civil conspiracy between a client and a lawyer was barred because  
28 “[t]here can be no conspiracy between an agent and its principal when the agent acts only in the

1 agent’s official capacity on behalf of the principal, and not for the agent’s private benefit.”); *Fraidin*  
2 *v. Weitzman*, 611 A.2d 1046, 1079 (Md. 1992) (“There can be no conspiracy when an attorney acts  
3 within the scope of his employment.”); *Macke Laundry Serv. Ltd. Pshp. v. Jetz Serv. Co.*, 931  
4 S.W.2d 166, 176 (Mo. Ct. App. 1996) (“As an agent of the client, an attorney acts as the client’s  
5 alter ego and not for the attorney,” and thus “an identity between agent and principal leads to a legal  
6 impossibility in the context of conspiracy,” because “[t]wo entities which are not legally distinct  
7 cannot conspire with one another.”); *accord Collins v. Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284,  
8 303, 662 P.2d 610, 622 (1983) (“Agents and employees of a corporation cannot conspire with their  
9 corporate principal or employer where they act in their official capacities on behalf of the  
10 corporation and not as individuals for their individual advantage.”).

11 David’s reliance on *Dezzani v. Kern & Associates, Ltd.*, 134 Nev. 61, 412 P.3d 56 (2018) is  
12 misplaced. In *Dezzani*, the Nevada Supreme Court analyzed whether an attorney was an “agent”  
13 for purposes of NRS 116.31183, a statute prohibiting retaliatory actions by a homeowner  
14 association board members, managers, officers, employees, and “agents.” *Id.* at 64-70, 412 P.3d at  
15 59-63. The Court held that the Nevada legislature did not intend to include attorneys as “agents”  
16 when it created NRS 116.31183. *Id.* at 69-70, 412 P.3d at 62-63. However, the Court noted that  
17 “an attorney providing legal services to a client generally owes no duty to adverse or third parties.”  
18 *Id.* at 68, 412 P.3d at 62. Regardless, *Dezzani* does not stand for the proposition that an attorney  
19 can legally conspire with their client when acting within the scope of the attorney-client  
20 relationship.

21 Second, David’s argument that whether Cooley was “acting for [her] own benefit is a  
22 question a fact” which can be addressed through discovery does not save his deficient claim.  
23 (Opp’n at 9:16-17.) In order to survive a special motion to dismiss, David must demonstrate he has  
24 a “probability of prevailing on” his claims “prima facie evidence”—allegations will not suffice. *See*  
25 NRS 41.660(3)(a), (3)(c). Worse, David has not made any allegations that Cooley was acting for  
26 her sole benefit. (*See generally* Compl.) Even if David were to make such an allegation, it would  
27 need to be pled with the particularity required by NRCP 9(b) because his claim is a civil  
28 conspiracy-to-defraud claim. *See Goodwin v. Executive Tr. Services, LLC*, 680 F. Supp. 2d 1244,



1 1254 (D. Nev. 2010) (holding civil conspiracy-to-defraud claim is subject to heightened pleading  
2 requirements); *Davenport v. GMAC Mortgage*, No. 56697, 2013 WL 5437119, at \*2 (Nev. Sept.  
3 25, 2013) (same) (unpublished disposition).

4 **2. David Cannot Allege Fraud Based on an Alleged Agreement that is**  
5 **Contradicted by an Express Term of the Divorce Decree.**

6 As detailed in the Motion, David cannot assert fraud based on an alleged term (the survivor  
7 benefits) that is contradicted by the unambiguous terms of a written agreement (the Divorce  
8 Decree). *See Rd. & Highway Builders v. N. Nev. Rebar*, 128 Nev. 384, 390, 284 P.3d 377, 380  
9 (2012) (holding a claim for fraud cannot be premised upon “parol agreements at variance with a  
10 written instrument . . .”) (internal quotation marks omitted). Nor can David assert fraud based  
11 solely on Sarah’s alleged failure to perform (as to an alleged term that is contradicted by the  
12 Divorce Decree). *See id.* at 389, 284 P.3d at 380 (“[T]here is no inference of a fraudulent intent not  
13 to perform from the mere fact that a promise made is subsequently not performed.”). David fails to  
14 address these arguments in his opposition and thus concedes his conspiracy-to-defraud claim fails  
15 as a matter of law. *See* EDCR 2.20(e).

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

20 **E. David’s Breach of Contract Claim is Barred by the Parol Evidence Rule as the**  
21 **Alleged Agreement is Contradicted by the Parties’ Integrated Agreement (the**  
22 **Divorce Decree).**

23 David contends that the parol evidence rule does not bar his breach of contract claim  
24 because the MOU is attached to the Divorce Decree, which somehow makes the Divorce Decree’s  
25 award of survivor benefits ambiguous. (Opp’n at 10:7-17.) Wrong.

26 As detailed in the Motion, the Divorce Decree is clearly the final integrated agreement  
27 between Sarah and David. The Divorce Decree contains an integration/merger clause, providing  
28 that David and Sarah “expressly agree that this Decree of Divorce contains the entire agreement of  
the parties on these matters, superseding any previous agreement between them.” (Compl., Ex. 2,

1 Divorce Decree, at 38.) Even if one were to disregard the integration/merger clause, it is evident  
2 that the 39-page Divorce Decree, “in view of its completeness and specificity reasonably appears to  
3 be a complete agreement,” and thus should be presumed to be an integrated agreement—especially  
4 considering that the three-page MOU failed to address numerous terms that were necessary to  
5 resolve the Divorce Matter. *See* Restatement (Second) of Contracts § 209(3). Indeed, the MOU  
6 itself contemplates that it does not represent the “final formal agreement” of the parties. (Compl.  
7 Ex. 1, MOU, at 1.) As such, David cannot use parol evidence (such as the alleged oral agreement  
8 or the MOU) to “vary or contradict [the Divorce Decree], since all prior negotiations and  
9 agreements are deemed to have been merged therein.” *See Kaldi*, 117 Nev. at 281, 21 P.3d at 21  
10 (internal quotation marks omitted).

11 Simply because the MOU is attached to the Divorce Decree does not make the Divorce  
12 Decree ambiguous. Parties often reference and/or attach prior agreements to their final integrated  
13 agreement. Indeed, given the integration clause of the Divorce Decree and that the MOU was  
14 attached, it is evident the parties intended to supersede the MOU.

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

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

21 As explained in the Motion, this Court should award Sarah her reasonable attorney’s fees  
22 and costs, and, the maximum \$10,000 allowed under Nevada’s anti-SLAPP statute, NRS  
23 41.670(1)(a)-(b). Even if this Court denies the Motion (which it should not), there is no basis to  
24 award David attorney’s fees—which he requests without any citation to authority or any legal  
25 analysis. (Opp’n at 10:18 – 19:1.) Sarah’s motion is far from frivolous—it is meritorious.

26 **III. CONCLUSION**

27 As For the reasons set forth above, Sarah respectfully requests that this Court grant her  
28 Motion in accordance with the anti-SLAPP statute as David’s lawsuit is an improper use of

1 litigation in an attempt to gain leverage against Sarah and to intimidate a witness (Cooley) in an  
2 upcoming evidentiary hearing in the Divorce Action. As Sarah has established, David cannot meet  
3 his burden of establishing a probability of prevailing on his claims because (i) this Court lacks  
4 subject matter jurisdiction, (ii) David's claims are unripe, and (iii) each of David's claims  
5 separately fails as a matter of law. Accordingly, this Court should grant Sarah's Motion and award  
6 her attorney's fees, costs, and \$10,000 pursuant to NRS 41.670(1).

7 In the alternative, Sarah respectfully requests the Court dismiss David's claims pursuant to  
8 NRCP 12(b)(1) and NRCP 12(b)(5).

9 DATED this 4<sup>th</sup> day of August, 2020.

10 BAILEY ♦ KENNEDY

11 By: /s/ Paul C. Williams

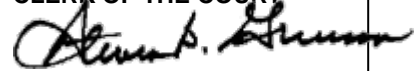
12 DENNIS L. KENNEDY

13 PAUL C. WILLIAMS

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



**TAB 13**



CDRG

DISTRICT COURT

CLARK COUNTY, NEVADA

David Rose, Plaintiff(s)

vs.

Regina McConnell, ESQ, Defendant(s)

CASE NO: A-20-815750-C

DEPT. NO: XI

**COMMISSIONER'S DECISION ON REQUEST FOR EXEMPTION**

REQUEST FOR EXEMPTION FILED ON: July 22, 2020

EXEMPTION FILED BY: Plaintiff OPPOSITION: No

**DECISION**

Having reviewed the Request for Exemption, and all related pleadings, the Request for Exemption is hereby GRANTED.

DATED this 7<sup>th</sup> of August, 2020.



ADR COMMISSIONER

**NOTICE**

Pursuant to Nevada Arbitration Rule 5(D), you are hereby notified you have five (5) days from the date you are served with this document within which to file written objections with the Clerk of Court and serve all parties. The Commissioner's Decision is deemed served three (3) days after the Commissioner's designee deposits a copy of the Decision in the U.S. Mail. **Pursuant to NEFCR Rule 9(f)(2) an additional 3 days is not added to the time if served electronically (via e-service).**

A copy of the foregoing ADR Commissioner's Decision was:

On August 7, 2020, a copy of the foregoing Commissioner's Decision on Request for Exemption was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

*If indicated below*, a copy of the foregoing Commissioner's Decision on Request for Exemption was also:

☐ Placed in the folder of counsel maintained in the Office of the Clerk of Court on \_\_\_\_\_, 2020.

☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at their last known address(es) on \_\_\_\_\_, 2020.

/s/ Lisa Kaba  
ADR COMMISSIONER'S DESIGNEE

**TAB 14**



A-20-815750-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Legal Malpractice**

**COURT MINUTES**

**August 11, 2020**

---

A-20-815750-C      David Rose, Plaintiff(s)  
vs.  
Regina McConnell, ESQ, Defendant(s)

---

**August 11, 2020      9:00 AM      All Pending Motions**

**HEARD BY:** Gonzalez, Elizabeth      **COURTROOM:** RJC Courtroom 03E

**COURT CLERK:** Dulce Romea

**PARTIES**      None. Minute order only - no hearing held.

**PRESENT:**

**JOURNAL ENTRIES**

- 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)...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 (ANTISLAPP), OR IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(B)(1) AND NRCP 12(B)(5)

Pursuant to Administrative Order 20-01, the Court decides this matter without the necessity of oral argument. The Court, having reviewed the Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP) 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 the related briefing and being fully informed, GRANTS the motion IN PART as to the civil conspiracy claim only. The conduct and statements at issue related to the ongoing domestic proceeding in D-17-547250-D. The allegations in this cause of action as to Ms. Rose are " [w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . . judicial body." Counsel for Ms. Rose is directed to submit a proposed order approved by opposing counsel consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order.

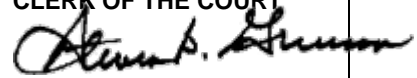
PRINT DATE: 08/11/2020

Page 1 of 2

Minutes Date: August 11, 2020

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 8-11-20

TAB 15



**ORDR (CIV)**

DENNIS L. KENNEDY

Nevada Bar No. 1462

PAUL C. WILLIAMS

Nevada Bar No. 12524

**BAILEY ♦ KENNEDY**

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

PWilliams@BaileyKennedy.com

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAVID JOHN ROSE, an individual,

Plaintiff,

vs.

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

Defendants.

Case No. A-20-815750-C

Dept. No. 11

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

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

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

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

### **FINDINGS OF FACT**

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

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

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

3. On March 23, 2018, Sarah and David, along with their respective counsel, participated in a mediation with the Honorable Rhonda K. Forsberg<sup>1</sup> in an effort to resolve the Divorce Action.

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 16 CONCLUSIONS OF LAW

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

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

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

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

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

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



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

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

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

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

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

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

**ORDER**

Based on the foregoing Findings and good cause appearing,

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

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

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

DATED this 27th day of August, 2020.

  
\_\_\_\_\_  
THE HONORABLE ELIZABETH GONZALEZ

Respectfully Submitted By:

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

*Attorneys for Defendant Sarah Janeen Rose*

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

~~COHEN | JOHNSON | PARKER | EDWARDS~~

By: \_\_\_\_\_

~~JAMES L. EDWARDS~~

~~ADAM C. EDWARDS~~

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

~~Las Vegas, Nevada 89119~~

~~Attorneys for Plaintiff David John Rose~~

Approved as to Form and Content By:

WILSON ELSEER MOSKOWITZ EDELMAN & DICKER

By: /s/ Sheri Thome

SHERI THOME

6689 Las Vegas Boulevard, South, Suite 200

Las Vegas, Nevada 89119

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

Approved as to Form and Content By:

LIPSON NEILSON P.C.

By: /s/ Joseph Garin

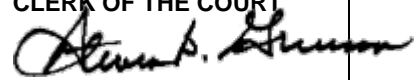
JOSEPH GARIN

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89114

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

**TAB 16**



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

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

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

///

///

///

///

///

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

DATED this 27<sup>th</sup> day of August, 2020.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

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

**CERTIFICATE OF SERVICE**

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

JAMES L. EDWARDS

Email: jedwards@cohenjohnson.com

ADAM C. EDWARDS

**COHEN|JOHNSON|PARKER|EDWARDS**

*Attorneys for Plaintiff*

375 East Warm Springs Road, Suite 104

*David John Rose*

Las Vegas, Nevada 89119

JOSEPH GARIN

Email: jgarin@lipsonneilson.com

**LIPSON NEILSON P.C.**

9900 Covington Cross Drive, Suite 120

*Attorneys for Defendants McConnell Law*

Las Vegas, Nevada 89114

*Ltd. and Regina McConnell Esq.*

SHERI THOME

Email: sheri.thome@wilsonelser.com

**WILSON ELSEER MOSKOWITZ**

**EDELMAN & DICKER**

*Attorneys for Defendants Shelly Booth*

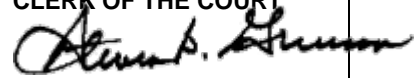
6689 Las Vegas Boulevard, South Suite 200

*Cooley, Esq. and the Cooley Law Firm*

Las Vegas, Nevada 89119

/s/ Sharon Murnane

Employee of BAILEY ♦ KENNEDY



**ORDR (CIV)**

DENNIS L. KENNEDY

Nevada Bar No. 1462

PAUL C. WILLIAMS

Nevada Bar No. 12524

**BAILEY ♦ KENNEDY**

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

PWilliams@BaileyKennedy.com

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAVID JOHN ROSE, an individual,

Plaintiff,

vs.

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

Defendants.

Case No. A-20-815750-C

Dept. No. 11

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

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

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

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

### **FINDINGS OF FACT**

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

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

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

3. On March 23, 2018, Sarah and David, along with their respective counsel, participated in a mediation with the Honorable Rhonda K. Forsberg<sup>1</sup> in an effort to resolve the Divorce Action.

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

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

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

---

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

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

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

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

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

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

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

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

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



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

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

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

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

#### 16 CONCLUSIONS OF LAW

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

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

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

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

7       17. Nevada’s anti-SLAPP statute defines a “[g]ood faith communication in furtherance  
8 of the right to free speech in direct connection with an issue of public concern” by four categories  
9 of communication. *See* NRS 41.637. One such category protects “[w]ritten or oral statement[s]  
10 made in direct connection with an issue under consideration by a . . . **judicial body** . . . .” NRS  
11 41.637(3) (emphasis added). To qualify for this category, “the statement must (1) relate to the  
12 substantive issues in the litigation and (2) be directed to persons having some interest in the  
13 litigation.” *Patin v. Ton Vinh Lee*, 134 Nev. 722, 726, 429 P.3d 1248, 1251 (2018). Finally, the  
14 communication must be “truthful or . . . made without knowledge of its falsehood.” NRS 41.637.  
15 The Court finds David’s civil conspiracy claim against Sarah concerns conduct and statements at  
16 issue related to the ongoing Divorce Action and thus is based on “[w]ritten or oral statement[s]  
17 made in direct connection with an issue under consideration by a . . . judicial body.” The Court  
18 further finds that Sarah’s conduct and statements “relate to the substantive issues in the litigation”  
19 and are “directed to persons having some interest in the litigation,”—specifically, to David and the  
20 Family Court. *See Patin*, 134 Nev. at 726, 429 P.3d at 1251. The Court further finds that Sarah’s  
21 conduct and alleged statements are not false—even assuming Sarah and David had orally agreed  
22 that Sarah would not receive survivor benefits at the mediation, neither their alleged agreement nor  
23 the inclusion of the survivor benefits in the Divorce Decree are false statements. *See* NRS 41.637.  
24 Accordingly, the Court finds that David’s civil conspiracy claim against Sarah is subject to a special  
25 motion to dismiss under Nevada’s anti-SLAPP statute.

26       18. The Court finds David’s breach of contract claim against Sarah is not based on  
27 “[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a . . .  
28

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

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

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

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

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

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

**ORDER**

Based on the foregoing Findings and good cause appearing,

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

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

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

DATED this 27th day of August, 2020.

  
\_\_\_\_\_  
THE HONORABLE ELIZABETH GONZALEZ

Respectfully Submitted By:

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

*Attorneys for Defendant Sarah Janeen Rose*

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

~~COHEN | JOHNSON | PARKER | EDWARDS~~

~~By: \_\_\_\_\_~~

~~JAMES L. EDWARDS~~

~~ADAM C. EDWARDS~~

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

~~Las Vegas, Nevada 89119~~

~~Attorneys for Plaintiff David John Rose~~

Approved as to Form and Content By:

WILSON ELSER MOSKOWITZ EDELMAN & DICKER

By: /s/ Sheri Thome

SHERI THOME

6689 Las Vegas Boulevard, South, Suite 200

Las Vegas, Nevada 89119

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

Approved as to Form and Content By:

LIPSON NEILSON P.C.

By: /s/ Joseph Garin

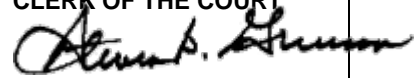
JOSEPH GARIN

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89114

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

**TAB 17**



**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  
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 breach of contract claim asserted against her by Plaintiff David John Rose ("David") pursuant to NRCP 12(b)(1) because this Court lacks subject-matter jurisdiction and under NRCP 12(b)(5) because his claim fails to state a cognizable claim for relief as pled.

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

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

David asserts Sarah breached a Memorandum of Understanding (“MOU”) by drafting a Stipulated Decree of Divorce (the “Divorce Decree”) providing Sarah with survivor benefits under David’s Public Employees Retirement System (“PERS”) pension—even though the MOU does not address survivor benefits at all. David’s claim fails as a matter of law.

Initially, this Court lacks subject-matter jurisdiction to address David’s claim against Sarah. The Family Court has exclusive jurisdiction over divorce matters. The Nevada Supreme Court has repeatedly held that where a divorce decree does not directly provide for the survival of a pre-decree agreement merged into the decree (like the MOU), that pre-decree agreement is destroyed and the parties’ remedies are limited to those available on the decree itself (e.g., a motion to set aside the decree). Stated differently, David cannot sue for a breach of the MOU and any alleged oral agreement because they were unequivocally merged into the Divorce Decree. Accordingly, this Court lacks subject-matter jurisdiction to address the Divorce Decree—which is still pending in the Family Court.

Even assuming this Court had subject-matter jurisdiction, David’s breach of contract claim fails as plead. First, David’s claim is unripe because it is contingent upon the outcome of the Divorce Matter, which remains pending. Second, David’s breach of contract claim is barred by the parol evidence rule because the Divorce Decree is the final integrated agreement and supersedes any prior agreements (including the MOU and any other alleged oral agreements).

In sum, this Court lacks subject matter jurisdiction over David’s claim against Sarah and, in any event, his claim fails as pled. Accordingly, this Court should dismiss David’s claim against Sarah with prejudice.

## II. STATEMENT OF FACTS

The following facts and allegations arise from the Complaint and are accepted as true solely for purposes of this Motion. *See, e.g., Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

### 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.)<sup>1</sup> On February 22, 2017, David filed a Complaint for Divorce against Sarah (the Divorce Action). (*See generally id.*)

### B. The Mediation.

On March 23, 2018, Sarah and David, along with their respective counsel, participated in a mediation with the Honorable Rhonda K. Forsberg<sup>2</sup> in an effort to resolve the Divorce Action. (Compl. ¶¶ 10, 14.) At that time, David was represented by co-defendant Regina McConnell, Esq. (“McConnell”) and Sarah was represented by co-defendant Cooley. (*Id.* ¶ 10.)

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. (*Id.* ¶ 12.) David alleges, and Sarah denies, that David refused to grant survivor benefits to Sarah. (*Id.* ¶¶ 13-14.)

### C. The Memorandum of Understanding.

The mediation was successful. (*Id.* ¶ 14.) Judge Forsberg drafted a three-page memorandum of understanding (the MOU), which memorialized the material terms of Sarah and David’s agreement. (*Id.* ¶ 15; Compl. at Ex. 1, MOU [hereinafter, “MOU”].) The MOU provided that its purpose was “to memorialize” the parties’ agreement. (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*

---

<sup>1</sup> On August 26, 2020, the Family Court entered an order sealing the Divorce Action pursuant to NRS 125.110(2). (*See* Order Sealing File, filed on Aug. 26, 2020.) However, NRS 125.110(2) provides that filings in a sealed divorce action may still be utilized as “required as evidence in another action or proceeding.”

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



1 *agreement* incorporating the terms herein,” and “[t]hat [final formal] agreement shall be ratified by  
2 the Court, but shall not merge and shall retain its separate nature as a contract.” (*Id.* (emphasis  
3 added).) The MOU did not address survivor benefits. (*See generally id.*)

4 **D. The Divorce Decree.**

5 After Sarah and David executed the MOU, Sarah (through her counsel) drafted a 39-page  
6 Stipulated Decree of Divorce (the Divorce Decree). (Compl. ¶ 15; *id.* at Ex. 2, Divorce Decree  
7 [hereinafter, “Divorce Decree”].) David and his counsel (McConnell) were given a copy of the  
8 Divorce Decree for their review. (Compl. ¶ 18.) McConnell advised David to execute the Divorce  
9 Decree, which he did. (Compl. ¶ 18; Divorce Decree at 39.)

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

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

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

1 The Divorce Decree also, contains an integration/merger clause, providing that the “Decree  
2 of Divorce contains the entire agreement of the parties on these matters, *superseding any previous*  
3 *agreement between them.*” (Divorce Decree at 38 (emphasis added).) Additionally, the parties  
4 agreed that “[n]o other agreement, statement, or promise made on or before the effective date of this  
5 Decree of Divorce by or to either party or his or her agent or representative will be binding on the  
6 parties unless (a) made in writing and signed by both parties, or (b) contained in an order of a Court  
7 of competent jurisdiction. (*Id.* at 38-39.) David does not allege (and cannot allege) there is another  
8 agreement, statement, or promise—either in a writing signed by both parties or in an order of a  
9 Court—addressing survivor benefits. (*See generally* Compl.)

10 Sarah (through her counsel) submitted the Divorce Decree to the judge assigned to the  
11 Divorce Action. (*Id.* ¶ 19.) The Divorce Decree was entered on April 11, 2018. (*See* Divorce  
12 Decree.)

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

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

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

22 On October 9, 2018, Sarah filed a Motion to Alter or Amend Judgment, or, in the  
23 Alternative, for New Trial Pursuant to NRCP 59(a)(7). (*See* Motion to Alter/Amend, Case No. D-  
24 17-547250-D, filed on Oct. 9, 2018.) On January 16, 2019, the Family Court entered an order  
25 setting aside its prior order granting David’s Motion to Set Aside and set the matter (including  
26 David’s Motion to Set Aside) for an evidentiary hearing. (*See* Order, Case No. D-17-547250-D,  
27 filed on Jan. 16, 2019.)  
28

1 The Court began the evidentiary hearing on the Motion to Set Aside (and other motions) on  
2 January 27, 2020. (*See* Minutes, Case No. D-17-547250-D, filed on Jan. 27, 2020.) As of the  
3 submission of this Motion, it is anticipated that the evidentiary hearing will not be completed until  
4 sometime in 2021.

### 5 III. RELEVANT PROCEDURAL HISTORY

#### 6 A. David Initiates this Lawsuit While the Divorce Action Remains Pending.

7 On May 29, 2020, David initiated this lawsuit against McConnell (and her law firm), Cooley  
8 (and her law firm), and Sarah. (*See generally* Compl.)

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

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

#### 25 B. This Court Grants Sarah’s Special Motion to Dismiss (anti-SLAPP) as to 26 David’s Conspiracy Claim.

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

(the “Special Motion to Dismiss”). On August 27, 2020, this Court entered an Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose’s Special Motion to Dismiss Pursuant to NRS 41.660 (anti-SLAPP) (the “Order”).

In essence, this Court found David’s civil conspiracy claim against Sarah was subject to Nevada’s anti-SLAPP statute, but that his breach of contract claim was not. (*See generally* Order.) This Court dismissed David’s civil conspiracy claim because David “failed to demonstrate, with ‘prima facie evidence,’ that he ha[d] a ‘probability of prevailing.’” (*Id.* at 6:3 – 7:2 (quoting NRS 41.660(3)(c)).) Notably, this Court found that David’s civil conspiracy claim failed because, among other reasons, “David cannot assert fraud based on an alleged term (the survivor benefits) that is contradicted by the unambiguous terms of a written agreement (the Divorce Decree).” (*Id.* at 6:22-25 (citing *Rd. & Highway Builders v. N. Nev. Rebar*, 128 Nev. 384, 390, 284 P.3d 377, 380 (2012)).)

The Court denied Sarah’s motions to dismiss under NRCP 12(b)(1) and NRCP 12(b)(5), which she had sought in the alternative, “without prejudice to renewal in an NRCP 12(b) response.” (*Id.* at 7:10-12 (emphasis added).)

#### IV. ARGUMENT

##### A. This Court Lacks Subject Matter Jurisdiction.

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

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

The Nevada Supreme Court has repeatedly held that a divorce decree destroys the independent contractual nature of a merged pre-decree agreement unless the agreement and the

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

17 For example, in *Day*, the Nevada Supreme Court held that a divorce decree destroyed a pre-  
18 decree agreement concerning alimony even though the pre-decree agreement “expressly stated that  
19 the agreement was not to be merged into any decree of divorce entered later.” 80 Nev. at 387, 395  
20 P.2d at 321. There, a wife and husband executed a written agreement concerning the husband’s  
21

22 <sup>3</sup> *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 <sup>4</sup> *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 payment of alimony to the wife and expressly provided that it would not merge into any subsequent  
2 divorce decree. *Id.* Later, the court entered a divorce decree that adopted the written agreement,  
3 but “did not itself state that the agreement was not merged, nor did it expressly provide that the  
4 agreement survive the decree.” *Id.*

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

14 Here, any prior agreements between Sarah and David (including the MOU and the alleged  
15 oral agreement) were merged into and destroyed by the Divorce Decree. The Divorce Decree  
16 contains an integration/merger clause, providing that David and Sarah “expressly agree that *this*  
17 *Decree of Divorce contains the entire agreement of the parties on these matters, superseding any*  
18 *previous agreement between them.*” (Compl., Ex. 2, Divorce Decree, at 38 (emphasis added).)  
19 Moreover, the Divorce Decree expressly references the MOU (which is attached to the Divorce  
20 Decree) but does not specifically direct the survival of the MOU or any other agreements. (*See*  
21 *generally id.*)<sup>5</sup> Thus, the MOU and any other agreements were merged into the Divorce Decree and  
22 did not survive. *Day*, 80 Nev. at 389-90, 395 P.2d at 323.

23  
24  
25 <sup>5</sup> 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.

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

6 Accordingly, this Court lacks subject-matter jurisdiction to address David’s breach of  
7 contract claim against Sarah.

8 **B. Even Assuming this Court had Subject Matter Jurisdiction, David’s Breach of**  
9 **Contract Claim Fails as a Matter of Law.**

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

11 Under NRCP 12(b)(5), “[d]ismissal is proper where the allegations are insufficient to  
12 establish the elements of a claim for relief.” *Stockmeier v. Nev. Dept. of Corrections*, 124 Nev. 313,  
13 316, 183 P.3d 133, 135 (2008) (internal quotation marks omitted). A complaint shall be dismissed  
14 “if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would  
15 entitle it to relief.” *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672; *see also Morris v. Bank of*  
16 *Am. Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (providing that dismissal under Rule  
17 12(b)(5) is appropriate where the allegations “fail to state a cognizable claim for relief”).

18 When deciding a motion to dismiss, the Court need not accept legal conclusions as true,  
19 even if they are cast in the form of factual allegations. *Clegg v. Cult Awareness Network*, 18 F.3d  
20 752, 754-55 (9th Cir. 1994);<sup>6</sup> *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1249 (D. Nev. 2003); *see*  
21 *also Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 875, 8 P.3d 837, 840 (2000) (stating that  
22 “[a] bare allegation is not enough” and that a complaint “must set forth sufficient facts to establish  
23 all necessary elements of a claim for relief”).

24 Also, in deciding a motion to dismiss, the court may consider materials outside the  
25 pleadings if those materials are attached to the complaint, *Hal Roach Studios v. Richard Feiner &*  
26 *Co.*, 896 F.2d 1542, 1555 (9th Cir. 1990), are referenced by the complaint, *Durning v. First Boston*

27 <sup>6</sup> Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority in  
28 Nevada courts. *See Exec. Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002).

1 *Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987), or are properly subject to judicial notice—such as  
2 matters of public record, *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986).

3 **2. David’s Claim is Unripe.**

4 In order for a claim to be justiciable, it must be ripe for review. *See Doe v. Bryan*, 102 Nev.  
5 523, 525, 728 P.2d 443, 444 (1986). A dispute is not ripe “if it rests upon contingent future events  
6 that may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S.  
7 296, 300 (1998).

8 Here, David’s breach of contract claim is plainly unripe as it is contingent on the outcome of  
9 the Divorce Matter. David’s Motion to Set Aside the Divorce Decree ***remains pending in the***  
10 ***Divorce Matter*** and, if he prevails on it, then his breach of contract claim against Sarah asserted in  
11 this matter will be moot—he will have suffered no damages. Indeed, as explained above, an  
12 evidentiary hearing on David’s Motion to Set Aside is still pending in the Divorce Matter.

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

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

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

23 “A claim for breach of contract requires the plaintiff to demonstrate the following elements:  
24 (1) the existence of a valid contract; (2) a breach by the defendant; and (3) damages as a result of  
25

---

26 <sup>7</sup> 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 the breach.” *See Cohen-Breen v. Gray Television Grp., Inc.*, 661 F. Supp. 2d 1158, 1171 (D. Nev.  
2 2009); *see also Calloway v. City of Reno*, 116 Nev. 250, 256, 993 P.2d 1259, 1263 (2000).

3 “The parol evidence rule forbids the reception of evidence which would vary or contradict  
4 [an integrated agreement], since all prior negotiations and agreements are deemed to have been  
5 merged therein.” *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (internal  
6 quotation marks omitted). “An integrated agreement is a writing or writings constituting a final  
7 expression of one or more terms of an agreement.” Restatement (Second) of Contracts § 209(1)  
8 (1981). Where an agreement “which in view of its completeness and specificity reasonably appears  
9 to be a complete agreement, it is taken to be an integrated agreement unless it is established by  
10 other evidence that the writing did not constitute a final expression.” *Id.* § 209(3).

11 Here, any prior agreement of David and Sarah (including the MOU and any alleged oral  
12 agreements) was merged into the Divorce Decree. As detailed above, the Divorce Decree contains  
13 an integration/merger clause, providing that David and Sarah “expressly agree that ***this Decree of***  
14 ***Divorce contains the entire agreement of the parties on these matters, superseding any previous***  
15 ***agreement between them.***” (Divorce Decree, at 38 (emphasis added).) Even if one were to  
16 disregard the integration/merger clause, it is evident that the 39-page Divorce Decree, “in view of  
17 its completeness and specificity reasonably appears to be a complete agreement,” and thus should  
18 be presumed to be an integrated agreement—especially considering that the three-page MOU failed  
19 to address numerous terms that were necessary to resolve the Divorce Matter. *See* Restatement  
20 (Second) of Contracts § 209(3). Indeed, the MOU itself contemplates that it does not represent the  
21 “final formal agreement” of the parties. (MOU at 1.)

22 Because the Divorce Decree is an integrated agreement, David cannot use parol evidence  
23 (such as the alleged oral agreement or the MOU) to “vary or contradict [the Divorce Decree], since  
24 all prior negotiations and agreements are deemed to have been merged therein.” *See Kaldi*, 117  
25 Nev. at 281, 21 P.3d at 21 (internal quotation marks omitted). Accordingly, since the Divorce  
26 Decree unambiguously provides that Sarah is to receive survivor benefits, David may not assert a  
27 breach of contract action based on an alleged prior agreement that is directly contradicted by an  
28 express term of the Divorce Decree. *See id.*; *accord* Restatement (Second) of Contracts § 213(1)

1 (1981) (“A binding integrated agreement discharges prior agreements to the extent that it is  
2 inconsistent with them.”).

3 In sum, even if this Court were to apply contract principles, such principles dictate that  
4 David’s breach of contract claim is not viable because David cannot use parol evidence to  
5 contradict the express terms of the parties’ integrated agreement (the Divorce Decree). *See Kaldi*,  
6 117 Nev. at 281, 21 P.3d at 21.

7 **V. CONCLUSION**

8 As detailed above, this Court lacks subject matter jurisdiction over David’s breach of  
9 contract claim against Sarah, David’s claim is unripe, and the parol evidence rule bars David’s claim  
10 as a matter of law. Accordingly, Sarah respectfully requests this Court dismiss David’s sole  
11 remaining claim against Sarah with prejudice.

12 DATED this 10<sup>th</sup> day of September, 2020.

13 BAILEY ♦ KENNEDY

14 By: /s/ Paul C. Williams

15 DENNIS L. KENNEDY

16 PAUL C. WILLIAMS

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

## CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 10<sup>th</sup> day of September, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JAMES L. EDWARDS

ADAM C. EDWARDS

*Attorneys for Plaintiff*

375 East Warm Springs Road, Suite 104

Las Vegas, Nevada 89119

JOSEPH GARIN

**LIPSON NEILSON P.C.**

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

Las Vegas, Nevada 89114

SHERI THOME

**WILSON ELSEER MOSKOWITZ**

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

6689 Las Vegas Boulevard, South Suite 200

Las Vegas, Nevada 89119

/s/ Sharon Murnane  
Employee of BAILEY❖KENNEDY

18

19

15

20

21

22

22

23

25

24

10

25

—

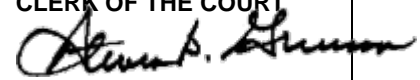
26

27

21

28

TAB 18



**MATF (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  
MOTION FOR ATTORNEY'S FEES**

**(Hearing Requested)**

Defendant Sarah Janeen Rose ("Sarah") moves for an award of her reasonable attorney's pursuant to NRS 41.670(a) based on this Court's Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (anti-SLAPP) (the "Order"). Further, Sarah respectfully requests that David be required to pay the fee award no later than thirty (30) days from notice of entry of the fee award.

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

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

On August 27, 2020, this Court entered an Order that granted, in part, Sarah's Special Motion to Dismiss pursuant to Nevada's anti-SLAPP statute. Specifically, this Court dismissed Plaintiff David John Rose ("David") civil conspiracy claim against Sarah while, at the same time, finding David's breach of contract claim against Sarah was not subject to the anti-SLAPP statute. Because this Court granted Sarah's Special Motion to Dismiss, she is entitled to receive her reasonable attorney's fees and costs<sup>1</sup> from David under Nevada's anti-SLAPP statute.

As detailed below, Sarah is seeking an award of \$16,567.50 in attorney's fees. Notably, Sarah is only seeking fifty percent of the time incurred to the extent that it does not relate solely to David's claim for civil conspiracy. Sarah believes this is an equitable manner to calculate the award of attorney's fees given that she prevailed as to one of David's two claims.

In sum, Sarah is entitled to her reasonable attorney's fees pursuant to Nevada's anti-SLAPP statute. Accordingly, this Court should award Sarah \$16,567.50 in attorney's fees and require David to pay the fee award within thirty (30) days of notice of entry of fee award.

### **II. RELEVANT PROCEDURAL HISTORY**

On July 6, 2020, Sarah filed a 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 "Special Motion to Dismiss"). On August 27, 2020, this Court entered an Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (anti-SLAPP) (the "Order").

In essence, this Court found David's civil conspiracy claim against Sarah was subject to Nevada's anti-SLAPP statute, but that his breach of contract claim was not. (*See generally* Order.) This Court dismissed David's civil conspiracy claim because David "failed to demonstrate, with 'prima facie evidence,' that he ha[d] a 'probability of prevailing.'" (*Id.* at 6:3 – 7:2 (quoting NRS 41.660(3)(c)).)

---

<sup>1</sup> Sarah has not incurred substantial costs as her filing fees are waived (this is a *pro bono* matter). Accordingly, Sarah is not seeking costs at this time, but reserves the right to do so in the future.

### III. ARGUMENT

#### A. This Court Should Award Sarah her Reasonable Attorney's Fees.

##### 1. Sarah is Entitled to Attorney's Fees Under the Anti-SLAPP Statute.

Nevada's anti-SLAPP statute provides that if a court grants a special motion to dismiss, the "court *shall* award reasonable costs and attorney's fees to the person against whom the action was brought . . . ." NRS 41.670(b) (emphasis added). An award of fees is mandatory. *Ketchum v. Moses*, 17 P.3d 735, 741 (Cal. 2001). Further, "an award of fees may include not only the fees incurred with respect to the underlying claim, but also the fees incurred in enforcing the right to mandatory fees . . . ." *Id.* at 747.

"The fee-shifting provision was apparently intended to discourage such strategic lawsuits against public participation by imposing the litigation costs on the party seeking to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." *Id.* (internal quotation marks omitted). "The fee-shifting provision also encourages private representation in SLAPP cases, including situations when a SLAPP defendant is unable to afford fees or the lack of potential monetary damages precludes a standard contingency fee arrangement." *Id.*

A "party who partially prevails on an anti-SLAPP motion must generally be considered a prevailing party unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion." *Mann v. Quality Old Time Serv., Inc.*, 42 Cal. Rptr. 3d 607, 614 (Cal Ct. App. 2006) (finding defendant was entitled to attorney's fees under California's anti-SLAPP statute even though special motion to strike was granted only as to one of two claims); accord *ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1020, 113 Cal. Rptr. 2d 625, 648-49 (2001) (finding defendant entitled to fees where special motion to strike was only granted as to one of five claims).<sup>2</sup>

---

<sup>2</sup> As detailed in the Special Motion to Dismiss, 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

1 Here, it is indisputable that Sarah’s obtaining a dismissal (on the merits) as to David’s civil  
2 conspiracy was significant. David’s civil conspiracy was his only tort-based claim—specifically, a  
3 conspiracy-to-defraud claim. David no longer has any viable tort claims against Sarah. Moreover,  
4 Sarah is no longer at risk of having a fact-finder decide that she committed an act of fraud (which, in  
5 any event, she plainly did not).

6 Regardless, David cannot reasonably argue that the result Sarah achieved was “so  
7 insignificant that [she] did not achieve any practical benefit from bringing the motion.” *See Mann*,  
8 42 Cal. Rptr. 3d at 614. Accordingly, Sarah must be considered a prevailing party and is entitled to  
9 her reasonable attorney’s fees. *See id.*

10 **2. The Attorney’s Fees Sought by Sarah are Reasonable.**

11 NRCP Rule 54(d)(2)(B) provides that, in support of a motion for attorneys’ fees, along with  
12 an affidavit from counsel “swearing that the fees were actually and necessarily incurred and were  
13 reasonable,” a party must submit “documentation concerning the amount of fees claimed.” A district  
14 court must then “determine the reasonableness of the requested fees.” *Shuette v. Beazer Homes*  
15 *Holding Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-59 (2005).

16 Further, under Nevada law, attorney’s fees may be awarded to counsel serving in a *pro bono*  
17 capacity. *See Miller v. Wilfong*, 121 Nev. 619, 622–23, 119 P.3d 727, 730 (2005). Awards of  
18 attorney’s fees in *pro bono* cases promote strong public policy interests. *See id.* (noting that “in  
19 domestic matters, one partner has often created or contributed to the other partner’s limited financial  
20 means” and “if fees are not awarded to pro bono counsel, a wealthier litigant would benefit from  
21 creating conditions that force the other party to seek legal aid.”).

22 As the Nevada Supreme Court has explained, “in calculating attorney’s fees, the court should  
23 consider the qualities of the advocate, the character of the work to be done, the work actually  
24 performed by the lawyer, and the result.” *Hornwood v. Smith’s Food King No. 1*, 107 Nev. 80, 87,

25  
26  
27 Nevada’s anti-SLAPP statute.”); *Coker v. Sassone*, 135 Nev. 8, 11, 432 P.3d 746, 749 (2019) (“This  
28 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.”).



807 P.2d 208, 213 (1991) (citing *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969)).

Here, an analysis of the *Brunzell* factors demonstrates that the amount of attorney's fees sought is reasonable. First, Sarah's counsel has ample experience—including ample experience in representing clients in civil litigation. (Ex. 1, Decl. Paul C. Williams ["Williams Decl."] ¶¶ 7-8.)

Second, the work involved was complex and involved analyzing a great deal of case law concerning Nevada's and California's anti-SLAPP statutes. Moreover, given that David has accused Sarah of engaging in fraud—an allegation that Sarah does not take lightly—Sarah had to take all steps necessary and appropriate in order to ensure that Sarah's rights were vindicated.

Third, the attached time entries (Exhibit 2) detail the work actually performed by Sarah's counsel, all of which was reasonably incurred. (Ex. 1, Williams Decl. ¶ 11.) Further, virtually all of the fees sought are from undersigned counsel, whose billing rate is substantially lower than Dennis Kennedy's rate, the partner assigned to the matter.

Fourth, the result speaks for itself. Sarah successfully dismissed David's claim for civil conspiracy under Nevada's anti-SLAPP statute. David's civil conspiracy claim was his only tort claim against Sarah and Sarah avoided a potential finding of fraud (even though David's claim utterly lacked merit).

Finally, Sarah is only seeking half of the attorney's fees incurred to the extent that they do not relate solely to David's claim for civil conspiracy, as follows:

Category	Fees	Multiplier	Total
General	\$30,255.00	0.5	\$16,027.50
Conspiracy-Only	\$540.00	1.0	\$540.00
			\$16,567.50

Additionally, Sarah is not seeking any fees to the extent that they related solely to David's breach of contract claim.

In sum, an analysis of the *Brunzell* factors demonstrates that the amount of attorney's fees sought by Sarah (\$16,567.50) is reasonable. Under the circumstances—especially given the public policy considerations of Nevada's anti-SLAPP statute—such an award is more than equitable.

IV. CONCLUSION

As detailed above, Sarah is entitled to attorney's fees under Nevada's anti-SLAPP statute. Further, the attorney's fees sought by Sarah are reasonable especially considering that she is only seeking fifty percent of the attorney's fees incurred to the extent the time does not relate solely to David's civil conspiracy claim.

Accordingly, Sarah respectfully requests this Court award her \$16,567.50 in attorney's fees. Further, Sarah respectfully requests that David be required to pay the fee award no later than thirty (30) days from notice of entry of the fee award.

DATED this 10<sup>th</sup> day of September, 2020.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

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

## CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 10<sup>th</sup> day of September, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JAMES L. EDWARDS

ADAM C. EDWARDS

*Attorneys for Plaintiff*

375 East Warm Springs Road, Suite 104

Las Vegas, Nevada 89119

JOSEPH GARIN

**LIPSON NEILSON P.C.**

*Attorneys for Defendants McConnell Law*

Las Vegas, Nevada 89114

SHERI THOME

**WILSON ELSEER MOSKOWITZ**

*Attorneys for Defendants Shelly Booth*

6689 Las Vegas Boulevard, South Suite 200

Las Vegas, Nevada 89119

/s/ Sharon Murnane  
Employee of BAILEY❖KENNEDY

# Exhibit 1

# Exhibit 1

**DECLARATION OF PAUL C. WILLIAMS, ESQ.**

I, Paul C. Williams, Esq., 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 on personal knowledge unless otherwise indicated, and if called upon to testify, I could and would testify competently to the following.

3. I am an associate of the law firm of Bailey ♦ Kennedy, counsel for Defendant Sarah Janeen Rose (“Sarah”) in the matter entitled *David John Rose v. Regina McConnell, Esq., et al.*, Case No. A-20-815750-C (the “Matter”), currently pending before the Eighth Judicial District Court of the State of Nevada.

4. Bailey ♦ Kennedy represents Sarah in a *pro bono* capacity, in conjunction with the Legal Aid Center of Southern Nevada *Pro Bono* Project.

5. The attorney’s fees incurred in the Matter are reflected in billing records as generated by Bailey ♦ Kennedy’s billing software, and are consistent with Bailey ♦ Kennedy’s usual and customary billing practices. Specifically:

a. Pursuant to Bailey ♦ Kennedy’s procedures, billing entries were completed by each attorney on a daily basis and accurately reflect the amount of time spent on each activity billed and the billing rates for each attorney who worked on the Matter.

b. The draft bills generated by Bailey ♦ Kennedy’s billing software were reviewed by the attorneys who worked on the Matter to ensure accuracy. This procedure ensures that Bailey ♦ Kennedy’s bills accurately reflect the time spent on and the work performed for the Matter.

c. The draft bills are further reviewed by the supervising attorney assigned to the Matter to ensure the reasonableness of the time spent on and the work performed for the Matter.

6. A true and correct copy of an itemized list of attorney’s fees incurred by Bailey ♦ Kennedy—related to Sarah’s Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-

1 SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5)  
2 (the “Special Motion to Dismiss”)—through September 10, 2020, is attached to the Motion for  
3 Attorney’s Fees as Exhibit 2. Time entries unrelated to Sarah’s Special Motion to Dismiss and time  
4 entries related solely to Plaintiff David John Rose’s (“David”) breach of contract claim, have been  
5 removed from the time entries.

6 7. Dennis L. Kennedy has practiced law in Nevada since 1975.

7 a. Mr. Kennedy graduated from the University of Washington School of  
8 Law in 1975.

9 b. From 1975 to 2006, Mr. Kennedy was a member and then director/  
10 shareholder (from 1979 to 2006) of the law firm Lionel Sawyer & Collins. From  
11 January 6, 2006 to the present, Mr. Kennedy has been a partner at Bailey❖Kennedy.

12 c. Mr. Kennedy’s practice focuses on complex civil disputes in such  
13 areas as commercial law, corporate law, business torts, and professional  
14 responsibility/ethics. Mr. Kennedy has litigated numerous contract disputes.

15 8. I have practiced law in Nevada since 2011.

16 d. I graduated from the University of Nevada, Las Vegas, William S.  
17 Boyd School of Law in 2011. I graduated *summa cum laude* and was an Articles  
18 Editor on the Nevada Law Journal.

19 e. From 2011 to the present, I have been an associate at  
20 Bailey❖Kennedy.

21 f. My practice focuses on complex civil disputes in such areas as  
22 commercial law, corporate law, business torts, healthcare law, and professional  
23 responsibility/ethics. I have litigated numerous contract disputes.

24 9. In total, through September 10, 2020, Bailey❖Kennedy has incurred \$28,995.00 in  
25 attorney’s fees relating to the Special Motion to Dismiss.

26 10. Bailey❖Kennedy estimates that it will incur an additional \$1,800 in Attorney’s Fees  
27 from September 10, 2020 to the date of the hearing on the Motion for Attorney’s Fees, as follows:  
28 5.0 hours for myself, at a rate of \$360.00 per hour, to prepare a reply brief in support of the Motion

1 for Attorney's Fees and to prepare for and participate in the hearing on the Motion for Attorney's  
2 Fees.

3 11. I have reviewed Bailey❖Kennedy's billing records for the Matter. Given the scope  
4 of the proceedings and the amount in controversy, the number of hours billed and the costs incurred  
5 were reasonable and necessary to represent Sarah in the Matter.

6 EXECUTED this 10<sup>th</sup> day of September, 2020.

7  
8   
9 \_\_\_\_\_  
Paul C. Williams, Esq.

# Exhibit 2

# Exhibit 2



# Bailey Kennedy, LLP

## Listing

Date	Prof	Narrative	Units	Price	Value
06/15/2020	PCW	Review/analyze Complaint and exhibits thereto (MOU and Divorce Decree).	3.00	\$360.00	\$1,080.00
06/16/2020	PCW	Legal research regarding anti-SLAPP statute.	0.75	\$360.00	\$270.00
06/17/2020	PCW	Review/analyze filings from divorce matter.	4.00	\$360.00	\$1,440.00
06/17/2020	PCW	Continue legal research regarding Anti-SLAPP.	1.75	\$360.00	\$630.00
06/23/2020	PCW	Begin to draft/revise 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).	2.50	\$360.00	\$900.00
06/23/2020	PCW	Continue legal research regarding Anti-SLAPP.	2.00	\$360.00	\$720.00
06/24/2020	PCW	Continue to draft/revise 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).	3.50	\$360.00	\$1,260.00
06/24/2020	PCW	Continue legal research anti-SLAPP statute.	2.50	\$360.00	\$900.00
06/25/2020	PCW	Continue legal research regarding anti-SLAPP statute.	1.00	\$360.00	\$360.00
06/25/2020	PCW	Continue to draft/revise 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).	2.50	\$360.00	\$900.00
06/25/2020	PCW	Legal research regarding civil conspiracy.	1.50	\$360.00	\$540.00
06/25/2020	PCW	Legal research regarding ripeness.	1.00	\$360.00	\$360.00
06/26/2020	PCW	Legal research regarding fraud.	1.00	\$360.00	\$360.00
06/26/2020	PCW	Continue to draft/revise 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).	4.00	\$360.00	\$1,440.00
06/29/2020	PCW	Continue to draft/revise 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).	2.75	\$360.00	\$990.00
06/29/2020	PCW	Review/analyze filings from divorce matter.	1.75	\$360.00	\$630.00

**Bailey Kennedy, LLP**

## Listing

06/29/2020	PCW	Legal research regarding survival of settlement agreements post-entry of a divorce decree.	2.00	\$360.00	\$720.00
06/30/2020	PCW	Continue to draft/revise 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).	6.00	\$360.00	\$2,160.00
06/30/2020	PCW	Continue legal research regarding survival of settlement agreements post-entry of a divorce decree.	0.50	\$360.00	\$180.00
07/01/2020	PCW	Continue to draft/revise draft/revise 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).	3.00	\$360.00	\$1,080.00
07/01/2020	PCW	Draft/revise Declaration of Sarah Janeen Rose in support of draft/revise 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).	0.75	\$360.00	\$270.00
07/01/2020	DLK	Review Motion to Dismiss. Several conferences with Paul C. Williams regarding Motion and strategy.	1.50	\$850.00	\$1,275.00
07/02/2020	PCW	Continue to draft/revise 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).	0.50	\$360.00	\$180.00
07/02/2020	PCW	Continue to draft/revise Declaration of Sarah Janeen Rose in Support of 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).	0.25	\$360.00	\$90.00
07/06/2020	PCW	Revise/finalize 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).	2.75	\$360.00	\$990.00

**Bailey Kennedy, LLP**

## Listing

07/20/2020	PCW	Phone conference with Steven B. Cohen (counsel David Rose) regarding request for extension to respond to Special Motion to Dismiss, hearing on Special Motion to Dismiss, and David's request to stay matter pending outcome of divorce matter.	0.25	\$360.00	\$90.00
07/29/2020	PCW	Review/analyze 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).	0.50	\$360.00	\$180.00
07/29/2020	PCW	Legal research regarding cases cited in 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).	0.50	\$360.00	\$180.00
08/01/2020	PCW	Continue legal research regarding cases cited in 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).	1.50	\$360.00	\$540.00
08/01/2020	PCW	Begin to draft/revise Reply in Support of 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).	3.00	\$360.00	\$1,080.00
08/03/2020	PCW	Continue to draft/revise Reply in Support of 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).	6.25	\$360.00	\$2,250.00
08/04/2020	PCW	Revise/finalize Reply in Support of 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).	4.00	\$360.00	\$1,440.00
08/11/2020	PCW	Review/analyze minute order on Special Motion to Dismiss.	0.25	\$360.00	\$90.00
08/11/2020	PCW	Legal research regarding entitlement to attorney's fees on Special Motion to Dismiss.	0.50	\$360.00	\$180.00

**Bailey Kennedy, LLP**

## Listing

08/12/2020	PCW	Continue legal research regarding entitlement to attorney's fees on Special Motion to Dismiss.	0.25	\$360.00	\$90.00
08/12/2020	PCW	Draft/revise Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP)	1.50	\$360.00	\$540.00
08/14/2020	PCW	Electronic correspondence with opposing counsel and counsel for co-defendants regarding Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP).	0.25	\$360.00	\$90.00
08/19/2020	PCW	Electronic correspondence with opposing counsel regarding draft Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP).	0.25	\$360.00	\$90.00
08/21/2020	PCW	Electronic correspondence with counsel for David Rose regarding draft Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP).	0.25	\$360.00	\$90.00
08/24/2020	PCW	Review/analyze draft proposed order from Plaintiff's counsel on Special Motion to Dismiss.	0.25	\$360.00	\$90.00
09/07/2020	PCW	Continue legal research regarding award of attorney's fees under anti-SLAPP statute.	1.00	\$360.00	\$360.00
09/07/2020	PCW	Draft/revise Defendant Sarah Janeen Rose's Motion for Attorney's Fees.	3.00	\$360.00	\$1,080.00
09/08/2020	PCW	Revise/finalize Motion for Attorney's Fees.	0.25	\$360.00	\$90.00
09/10/2020	PCW	Draft/revise declaration of Paul C. Williams in Support of Motion for Attorney's Fees and itemized list of attorney's fees incurred.	2.00	\$360.00	\$720.00
<b>Grand Total:</b>			<u>76.50</u>		<u>\$28,995.00</u>

TAB 19

1 **NOAS (CIV)**  
DENNIS L. KENNEDY  
2 Nevada Bar No. 1462  
PAUL C. WILLIAMS  
3 Nevada Bar No. 12524  
**BAILEY ♦ KENNEDY**  
4 8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
5 Telephone: 702.562.8820  
Facsimile: 702.562.8821  
6 DKennedy@BaileyKennedy.com  
PWilliams@BaileyKennedy.com  
7

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

11 DISTRICT COURT  
CLARK COUNTY, NEVADA

12 DAVID JOHN ROSE, an individual,  
13 Plaintiff,

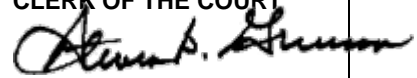
14 vs.

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

Case No. A-20-815750-C  
Dept. No. 11

**DEFENDANT SARAH JANEEN ROSE'S  
NOTICE OF APPEAL**

21 Notice is hereby given that Defendant Sarah Janeen Rose ("Sarah") hereby appeals, to the  
22 Supreme Court of Nevada, the portions of the Order Granting in Part, and Denying in Part,  
23 Defendant Sarah Janeen Rose's Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP),  
24 entered in this action on August 27, 2020 (the "Order"), that found Plaintiff David John Rose's  
25 ("David") breach of contract claim was not subject to a special motion to dismiss under Nevada's  
26 anti-SLAPP statute (*see* Order at 5:26 – 6:2) and denied Sarah's Special Motion to Dismiss  
27 Pursuant to NRS 41.660 (Anti-SLAPP) as to David's breach of contract claim against Sarah (*see id.*  
28 at 7:8-9).



1 Sarah is represented by undersigned counsel on a *pro bono* basis. A copy of the Statement  
2 of Legal Aid Representation, filed on July 6, 2020, is attached hereto as Exhibit A.

3 DATED this 25<sup>th</sup> day of September, 2020.

4 BAILEY ♦ KENNEDY

5 By: /s/ Paul C. Williams

6 DENNIS L. KENNEDY

7 PAUL C. WILLIAMS

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

## CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 25<sup>th</sup> day of September, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

H. STAN JOHNSON

**COHEN|JOHNSON|PARKER|EDWARDS**

JOSEPH GARIN

SHERI THOME

/s/ Sharon Murnane  
Employee of BAILEY❖KENNEDY



Exhibit A

Exhibit A

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](mailto: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.**

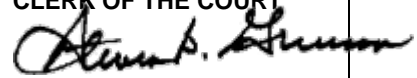
Bailey Kennedy  
8984 Spanish Ridge Avenue  
Las Vegas Nevada 89148

Tel: (702) 562-8820

Fax: (702) 562-8821

[dkennedy@baileykennedy.com](mailto:dkennedy@baileykennedy.com)

TAB 20



**ASTA (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  
CASE APPEAL STATEMENT**

Defendant Sarah Janeen Rose hereby submits this Case Appeal Statement:

**1. Name of appellant filing this case appeal statement:**

Defendant Sarah Janeen Rose ("Sarah").

**2. Identify the judge issuing the decision, judgment, or order appealed from:**

Judge Elizabeth Gonzalez, Department 11, Eighth Judicial District Court.

///

///

///

**3. Identify each appellant and the name and address of counsel for each appellant:**

Sarah is represented by:

Dennis L. Kennedy  
Paul C. Williams  
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

**4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):**

Plaintiff David John Rose ("David") is represented by:

H. Stan Johnson  
Ryan D. Johnson  
COHEN|JOHNSON|PARKER|EDWARDS  
375 East Warm Springs Road, Suite 104  
Las Vegas, Nevada 89119  
sjohnson@cohenjohnson.com  
rjohnson@cohenjohnson.com  
jedwards@cohenjohnson.com  
aedwards@cohenjohnson.com

**5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):**

Not applicable.

**6. Indicate whether appellant was represented by appointed or retained counsel in the district court:**

Sarah is represented by undersigned counsel, on a *pro bono* basis in conjunction with the Legal Aid Center of Southern Nevada Pro Bono Project, in the district court. A copy of the Statement of Legal Aid Representation, filed on July 6, 2020, is attached hereto as Exhibit A.

1           **7.       Indicate whether appellant is represented by appointed or retained counsel on**  
2 **appeal:**

3           Sarah is represented by undersigned counsel, on a *pro bono* basis in conjunction with the  
4 Legal Aid Center of Southern Nevada Pro Bono Project, on appeal. A copy of the Statement of  
5 Legal Aid Representation, filed on July 6, 2020, is attached hereto as Exhibit A.

6           **8.       Indicate whether appellant was granted leave to proceed in forma pauperis, and**  
7 **the date of entry of the district court order granting such leave:**

8           Not applicable. However, a copy of the Statement of Legal Aid Representation, filed on July  
9 6, 2020, is attached hereto as Exhibit A.

10          **9.       Indicate the date the proceedings commenced in the district court (e.g., date**  
11 **complaint, indictment, information, or petition was filed):**

12           The Complaint was filed on May 29, 2020.

13          **10.      Provide a brief description of the nature of the action and result in the district**  
14 **court, including the type of judgment or order being appealed and the relief granted by the**  
15 **district court:**

16           This case concerns a Memorandum of Understanding (“MOU”) and a Stipulated Decree of  
17 Divorce (the “Divorce Decree”) entered in a related divorce action, *David John Rose v. Sarah*  
18 *Janeen Rose*, Case No. D-17-547250-D (the “Divorce Action”), which is currently pending before  
19 the Family Division of the Eighth Judicial District Court (the “Family Court”). In essence, David  
20 contends that Sarah and her former counsel in the Divorce Action breached the MOU by inserting  
21 language in the Divorce Decree that provided Sarah with survivor benefits under David’s Public  
22 Employees Retirement System (“PERS”) pension—even though the MOU does not contain any  
23 terms or references to survivor benefits under David’s PERS pension. Notably, David has a pending  
24 motion to set aside the Divorce Decree in the Divorce Action.

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

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

4 On August 27, 2020, the district court entered an Order Granting in Part, and Denying in  
5 Part, Defendant Sarah Janeen Rose’s Special Motion to Dismiss Pursuant to NRS 41.660 (anti-  
6 SLAPP) (the “Order”). In essence, the district court found David’s civil conspiracy claim against  
7 Sarah was subject to Nevada’s anti-SLAPP statute, but that his breach of contract claim was not.  
8 (*See generally* Order.) The district court dismissed David’s civil conspiracy claim because David  
9 “failed to demonstrate, with ‘prima facie evidence,’ that he ha[d] a ‘probability of prevailing.’” (*Id.*  
10 at 6:3 – 7:2 (quoting NRS 41.660(3)(c)).) The district court denied Sarah’s motions to dismiss  
11 under NRCP 12(b)(1) and NRCP 12(b)(5), which she had sought in the alternative, “without  
12 prejudice to renewal in an NRCP 12(b) response.” (*Id.* at 7:10-12.)

13 Sarah now appeals the portions of the Order that found David’s breach of contract claim  
14 was not subject to a special motion to dismiss under Nevada’s anti-SLAPP statute (*see* Order at  
15 5:26 – 6:2) and denied Sarah’s Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP)  
16 as to David’s breach of contract claim against Sarah (*see id.* at 7:8-9).

17 **11. Indicate whether the case has previously been the subject of an appeal to or**  
18 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**  
19 **docket number of the prior proceeding:**

20 Not applicable.

21 **12. Indicate whether this appeal involves child custody or visitation:**

22 Not applicable.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1           **13.     If this is a civil case, indicate whether this appeal involves the possibility of**  
2 **settlement:**

3           Yes.

4           DATED this 25<sup>th</sup> day of September, 2020.

5                               BAILEY ♦ KENNEDY

6                               By: /s/ Paul C. Williams

7                                       DENNIS L. KENNEDY

8                                       PAUL C. WILLIAMS

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



## CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 25<sup>th</sup> day of September, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

H. STAN JOHNSON

**COHEN|JOHNSON|PARKER|EDWARDS**

JOSEPH GARIN

SHERI THOME

/s/ Sharon Murnane  
Employee of BAILEY❖KENNEDY

# Exhibit A

# Exhibit A

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](mailto:dkennedy@baileykennedy.com)

*Attorney for the Defendant*

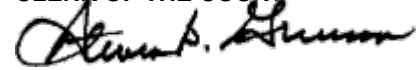
*In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project*

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.**

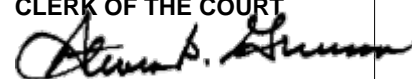
Bailey Kennedy  
8984 Spanish Ridge Avenue  
Las Vegas Nevada 89148

Tel: (702) 562-8820

Fax: (702) 562-8821

[dkennedy@baileykennedy.com](mailto:dkennedy@baileykennedy.com)

TAB 21



COHEN JOHNSON PARKER EDWARDS  
H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
RYAN D. JOHNSON, ESQ.  
Nevada Bar No. 14724  
rjohnson@cohenjohnson.com  
375 E. Warm Springs Rd., Ste. 104  
Las Vegas, Nevada 89119  
Tel. 702-823-3500  
Fax. 702-823-3400  
*Attorneys for Plaintiff*

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,  
Plaintiffs,

Case No.: A-20-815750-C

Dept No.: 11

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,

**OPPOSITION TO DEFENDANT  
SARAH JANEEN ROSE'S MOTION  
FOR ATTORNEYS FEES**

Defendants.

Plaintiff David Rose, by and through his attorney of record, H. Stan Johnson, Esq. of Cohen Johnson Parker Edwards, hereby files this Opposition to Defendant Sarah Janeen Rose's Motion for Attorney Fees.

This Opposition is based upon the papers and pleadings here on file, the following Memorandum of Points and Authorities, and any oral argument as may be

1 heard by the Court.

## 2 POINTS AND AUTHORITIES

### 3 I. INTRODUCTION

4 This Court partially granted Ms. Rose's anti-SLAPP motion, but did not  
5 dismiss Plaintiff's Breach of Contract claim against Ms. Rose. As Ms. Rose's victory  
6 was largely insignificant in regard to the liability she faces, and the requested  
7 attorney's fees are exorbitant and unreasonable, this Motion for fees should be  
8 denied.  
9

### 10 II. ARGUMENT

#### 11 A. MS. ROSE IS NOT ENTITLED TO ATTORNEY'S FEES UNDER 12 THE ANTI-SLAPP STATUTE

13 Ms. Rose only partially prevailed on her Anti-SLAPP motion. The breach of  
14 contract claim against her survived. The dismissal of the civil conspiracy cause of  
15 action was relatively insignificant. Ms. Rose's partial victory did not release her from  
16 this lawsuit.  
17

18 "A "party who partially prevails on an Anti-SLAPP motion must  
19 generally be considered a prevailing party **unless the results of the**  
20 **motion were so insignificant that the party did not achieve**  
21 **any practical benefit from bringing the motion.**" Mann v.  
22 Quality Old Time Serv., Inc., 42 Cal. Rptr. 3d 607, 614 (Cal Ct. App.  
23 2006)); Emphasis Added; See, *Moran v. Endres* (2006) 135  
24 Cal.App.4th 952, 955–956 (37 Cal. Rptr. 3d 786) (the trial court did  
25 not abuse its discretion when it denied the defendant's fees for an  
26 anti-SLAPP motion that challenged numerous tort claims brought by  
27 the plaintiff **but succeeded in striking only a single cause of**  
28 **action for conspiracy**); See *Martin v. Inland Empire Utils. Agency*,  
198 Cal. App. 4th 611, 633, 130 Cal. Rptr. 3d 410, 430 (2011)  
(California Appeals Court upholds a trial court's denial of a motion  
for attorney fees where the Defendant's gained no practical benefit  
from their partial anti-SLAPP victory);

1 The Court in *Moran* did not consider the dismissal of a Conspiracy claim as  
2 significant when the remaining claims survived. “Further, as a legal matter, the  
3 cause of action for conspiracy added little or nothing to plaintiffs' case. “Conspiracy  
4 is not a cause of action, but a legal doctrine that imposes liability on persons who,  
5 although not actually committing a tort themselves, share with the immediate  
6 tortfeasors a common plan or design in its perpetration. ...standing alone, a  
7 conspiracy does no harm and engenders no tort liability.” *Moran v. Endres*, 135 Cal.  
8 App. 4th 952, 954-55, 37 Cal. Rptr. 3d 786, 788 (2006).

9  
10 In *Moran*, the Defendants attempted to dismiss numerous causes of action  
11 against them but only succeeded in prevailing against the conspiracy claim. The  
12 Court found that:

13  
14 To be blunt, defendants' motion accomplished nothing, except that  
15 plaintiffs were put to the cost of defending the motion. The possible  
16 recovery against defendants did not change. The factual allegations  
17 which defendants had to defend did not change. The work involved in  
18 trying the case did not change. Defendants' burden concerning their  
19 jurisdictional defense did not change. The case was essentially the  
20 same after the ruling on the special motion to strike as it was before.  
21 The results of the motion were minimal and insignificant, fully  
22 justifying the court's finding that defendants should not recover fees.

23 *Id.* at 955. “Defendants here sought to dismiss the case against them, but instead  
24 obtained a ruling which in every practical sense meant nothing. That does not entitle  
25 them to fees.” *Id.* at 956.

26 In the present case, Ms. Rose brought her anti-SLAPP motion to dismiss and  
27 was only successful in dismissing the Conspiracy claim against her. Like in *Moran*,  
28 this result changed nothing for her. The possible recovery against her has not  
changed since the breach of contract claim survived. The work involved in trying the

1 case did not change. The case against Ms. Rose is essentially the same after the ruling  
2 on her anti-SLAPP motion.

3 Ms. Rose has not reaped any significant benefit from bringing her Anti-SLAPP  
4 motion. Though the civil conspiracy claim has been dismissed, the basis of that  
5 conspiracy claim, the breach of contract, remains. Ms. Rose's potential liability is the  
6 same. This is evidenced by the fact that Ms. Rose has now filed an additional Motion  
7 to Dismiss on the breach of contract claim.  
8

9 **B. THE ATTORNEYS FEES SOUGHT ARE NOT REASONABLE**

10 Ms. Rose's attorney submitted billing records showing 76.5 hours billed on this  
11 matter for a total of \$28,995 of attorney's fees. These fees are clearly excessive when  
12 considering that they are for litigating one motion to dismiss.  
13

14 The *Brunzell* factors do not support such an excessive award of attorney's fees.  
15 The first factor is to consider the experience of the attorney. While Mr. Williams may  
16 be an experienced litigator, he was apparently not very knowledgeable about these  
17 matters. This required him to spend 17.75 hours researching these matters. This does  
18 not include the 8.75 hours he spent reviewing the divorce case. Mr. Rose should not  
19 be required to pay Mr. Williams to learn a new area of law.  
20

21 Second, we must consider the character of the work to be done. Motions to  
22 dismiss are commonplace. Many firms have forms and examples that can quickly be  
23 tailored to any case. Motions to dismiss do not requires an excessive amount of skill  
24 or time to complete. Mr. Williams is claiming that this Motion and Reply required 76  
25 hours to complete. For a 22-page motion this is clearly excessive.  
26

27 Third, we must consider the work actually performed by the lawyer. The billing only  
28



1 covers one Motion to Dismiss and its related Reply. While important, these motions  
2 do not require the equivalent of two, forty-hour work weeks to complete. After  
3 spending 26.5 hours researching and reviewing documents, Mr. Williams then spent  
4 a full 30 hours just drafting the motion. He then spent an additional 13.75 hours  
5 drafting his reply. The number of hours spent on the motion and reply are not  
6 reasonable under any circumstances.

8 Fourth, we consider the result. While Mr. Williams was successful in obtaining  
9 a partial result, his motion did not result in the dismissal of the main claim against  
10 Ms. Rose in this lawsuit. Mr. Williams fails to state that Mr. Rose's breach of contract  
11 claim against Ms. Rose survived.

13 Finally, though not a *Brunzell* factor, Mr. Williams is representing Ms. Rose  
14 pro bono. It is unlikely that Ms. Rose would have accepted 76 hours billed on one  
15 motion if she were expected to pay. That would be unreasonable, and this should also  
16 be considered unreasonable when Mr. Rose is expected to pay. Mr. Williams argues  
17 that fees should be granted in pro bono cases so as to protect those who must seek  
18 legal aid from wealthier clients. Mr. Rose is not a wealthy client. He worked as a  
19 police officer and is going through a protracted divorce. His resources are stretched  
20 thin. Mr. Rose is not a "wealthier litigant" from whom Ms. Rose should be protected.  
21 Furthermore, as Ms. Rose never had an obligation to pay for her attorney's services,  
22 any fees awarded are not awarded to make Ms. Rose whole, but would be awarded as  
23 a wind fall to her attorneys.

### 26 III. CONCLUSION

27 Ms. Rose is not entitled to attorney's fees from her Anti-SLAPP motion. Her  
28

1 partial win did not significantly benefit her liability in this lawsuit. Furthermore, the  
2 *Brunzell* factors do not support an award of nearly thirty thousand dollars in legal  
3 fees for a single motion. Mr. Rose is not the kind of wealthy litigant that pro bono  
4 parties need to be protected from. This award of attorney fees would not recompense  
5 Ms. Rose or make her whole but would only be a wind fall to her attorneys. No award  
6 should be granted, or in the alternative, the award should be significantly reduced.  
7

8  
9 Dated this 28th day of September, 2020.

10 **COHEN | JOHNSON | PARKER | EDWARDS**

11 /s/ H. Stan Johnson

12 H. STAN JOHNSON, ESQ.

13 Nevada Bar No. 00265

14 sjohnson@cohenjohnson.com

15 RYAN D. JOHNSON, ESQ.

16 Nevada Bar No. 14724

17 rjohnson@cohenjohnson.com

18 375 E. Warm Springs Rd., Ste. 104

19 Las Vegas, Nevada 89119

20 *Attorneys for Plaintiffs*  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

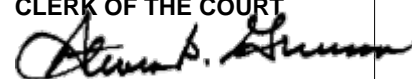
I certify that I am an employee of Cohen Johnson Parker Edwards and that on the 28th day of September, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JOSEPH GARIN  
LIPSON NEILSON P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89114  
jgarin@lipsonneilson.com  
*Attorneys for Defendants McConnell Law Ltd. and Regina McConnell Esq.*

SHERI THOME  
WILSON ELSEER MOSKOWITZ EDELMAN & DICKER  
6689 Las Vegas Boulevard, South Suite 200  
Las Vegas, Nevada 89119  
sheri.thome@wilsonelser.com  
*Attorneys for Defendants Shelly Booth Cooley, Esq.  
and the Cooley Law Firm*

DENNIS L. KENNEDY  
PAUL C. WILLIAMS  
BAILEY KENNEDY  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 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*

TAB 22



COHEN JOHNSON PARKER EDWARDS  
H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
RYAN D. JOHNSON, ESQ.  
Nevada Bar No. 14724  
rjohnson@cohenjohnson.com  
375 E. Warm Springs Rd., Ste. 104  
Las Vegas, Nevada 89119  
Tel. 702-823-3500  
Fax. 702-823-3400  
*Attorneys for Plaintiff*

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,  
Plaintiff,

Case No.: A-20-815750-C

Dept No.: 11

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,

**OPPOSITION TO DEFENDANT  
SARAH JANEEN ROSE'S MOTION  
TO DISMISS PURSUANT TO NRCP  
12(B)(1) AND NRCP 12(B)(5).**

Defendants.

Plaintiff David Rose, by and through his attorney of record, H. Stan Johnson, Esq. of Cohen Johnson Parker Edwards, hereby files this OPPOSITION TO DEFENDANT SARAH JANEEN ROSE'S MOTION TO DISMISS PURSUANT TO NRCP 12(B)(1) AND NRCP 12(B)(5).

This Opposition is based upon the papers and pleadings here on file, the

1 following Memorandum of Points and Authorities, and any oral argument as may be  
2 heard by the Court.

## 3 POINTS AND AUTHORITIES

### 4 **I. INTRODUCTION**

5  
6 Ms. Rose breached a Memorandum of Understanding (“MOU”) by drafting a  
7 Stipulated Decree of Divorce which did not match the terms of the MOU. The MOU  
8 specifically required Ms. Rose to have her attorney draft a Decree of Divorce (“DOD”)  
9 which matched the terms of the MOU. Ms. Rose added terms which would grant her  
10 a survivor benefit under Plaintiff’s Public Employees Retirement System (“PERS”)  
11 pension.  
12

13 Ms. Rose brought a special anti-SLAPP Motion to Dismiss in an attempt to  
14 dismiss Plaintiff’s civil conspiracy and breach of contract claims against Ms. Rose.  
15 This Court partially granted Ms. Rose’s anti-SLAPP motion, but did not dismiss  
16 Plaintiff’s breach of contract claim against Ms. Rose. Ms. Rose now brings this  
17 Defendant Sarah Janeen Rose’s Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP  
18 12(b)(5).  
19

### 20 **II. ARGUMENT**

#### 21 **A. This Court Has Jurisdiction Over This Matter.**

22  
23 This case concerns malpractice, breach of contract, and breach of the covenant  
24 of good faith and fair dealing. Defendants have argued that the family court has  
25 jurisdiction over this case and that “...family courts have original and exclusive  
26 jurisdiction over all proceedings brought pursuant to NRS Chapter 125.” See Motion  
27 to Dismiss pp. 7:25-26. This matter is not brought pursuant to NRS Chapter 125 and  
28

1 is not a claim for the dissolution of a marriage but is primarily a breach of contract  
2 action. Plaintiff is claiming that Ms. Rose breached the Memorandum of  
3 Understanding. However, Ms. Rose argues that the MOU was merged into the DOD  
4 and destroyed. However, the MOU clearly indicates that it was not to be merged into  
5 the DOD. “The parties agree, however, that counsel for Sarah shall draft a final  
6 formal agreement incorporate the terms herein. That agreement shall be ratified by  
7 the Court, **but shall not merge and shall retain its separate nature as a**  
8 **contract.**” See MOU, pp 1, as Exhibit 2 herein, emphasis added. Ms. Rose argues  
9 that the Nevada Supreme Court requires that both the MOU and DOD must state  
10 that the MOU is intended to remain as a separate agreement to avoid merger.  
11 However, the DOD attaches the MOU as an exhibit, clearly indicating that the MOU  
12 still exists on its own, outside of the Decree. Otherwise, why both attaching it?

13  
14 Additionally, the MOU is a contract that requires performance and completion  
15 of certain terms before the Decree of Divorce ever existed. These terms could not be  
16 merged into the DOD because they were to be completely satisfied before that decree  
17 existed. Specifically, the MOU requires the counsel for Sarah to “draft a final formal  
18 agreement incorporating the terms herein.” See Ex 2, pp 1. This is one of terms of  
19 this MOU which Sarah and her attorney breached. They did not incorporate the  
20 terms of the agreement and in fact added additional terms. As the breach of this  
21 agreement occurred before the DOD existed, there could not be merger of this term  
22 into the DOD. As such, this cause of action is not brought under NRS 125 and exists  
23 on its own. This Court may therefore exercise subject matter jurisdiction over the  
24 breach of contract claim against the Defendant.  
25  
26  
27  
28

**B. David's Claim is Ripe**

As stated above, the breach of contract occurred when Ms. Rose's counsel drafted a DOD which did not reflect the terms of the MOU. While it is true that Plaintiff is attempting to remedy the breach in family court, the breach already occurred, and Plaintiff was damaged. Therefore, the cause of action for breach of contract is ripe. Even if the terms of the MOU are ultimately upheld, David has been damages by having to litigate the issue, pay additional attorney fees and suffer through additional litigation that should have ended if Ms. Rose and her attorney had abided by the MOU.

A case is ripe for review when "the degree to which the harm alleged by the party seeking review is sufficiently concrete, rather than remote or hypothetical, [and] yield[s] a justiciable controversy." *Herbst Gaming, Inc. v. Sec'y of State*, 122 Nev. 877, 887-88, 122 Nev. 877, 141 P.3d 1224, 1230-31 (2006). The Court should conclude that the harm to Plaintiff is sufficiently concrete to yield a justiciable controversy. The contract (MOU) was clearly breached by Ms. Rose and Mr. Rose has been damaged, regardless of the outcome of the hearing in family court, the breach has occurred, and Mr. Rose has incurred damage.

In the alternative, Plaintiff would request that these proceedings be stayed until the family court matter be concluded or dismissed without prejudice.

**C. David's Breach of Contract Claim Is Not Barred By The Parol Evidence Rule**

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



1 consider outside evidence to interpret a contract:

- 2 (a) To resolve ambiguities in the contract; (*Lowden Inv. Co. v. Gen.*  
3 *Elec. Credit Co.*, 103 Nev. 374, 741 P.2d 806 (1987)).  
4 (b) When the contract is silent as to a particular matter; (*Golden Press*  
5 *v. Pac. Freeport Warehouse*, 97 Nev. 163, 625 P.2d 578 (1981)).  
6 (c) When the contract was fraudulent; (*Sierra Diesel Injection Serv.*  
7 *v. Burroughs Corp., Inc.*, 651 F.Supp. 1371, 1377 (D. Nev. 1987)).  
8 (d) When the contract fails to specify what the consideration received  
9 would be; (*Dixon v. Miller*, 43 Nev. 280, 285, 184 P. 926, 927 (1919)).

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

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

### III. CONCLUSION

For the reasons stated above, Defendant Sarah Rose's Motion to Dismiss should be denied.

Dated this 28th day of September, 2020.

**COHEN | JOHNSON | PARKER | EDWARDS**

/s/ H. Stan Johnson

H. STAN JOHNSON, ESQ.

Nevada Bar No. 00265

sjohnson@cohenjohnson.com

RYAN D. JOHNSON, ESQ.

Nevada Bar No. 14724

rjohnson@cohenjohnson.com

375 E. Warm Springs Rd., Ste. 104

Las Vegas, Nevada 89119

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of Cohen Johnson Parker Edwards and that on the 28th day of September, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

JOSEPH GARIN  
LIPSON NEILSON P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89114  
jgarin@lipsonneilson.com  
*Attorneys for Defendants McConnell Law Ltd. and Regina McConnell Esq.*

SHERI THOME  
WILSON ELSER MOSKOWITZ EDELMAN & DICKER  
6689 Las Vegas Boulevard, South Suite 200  
Las Vegas, Nevada 89119  
sheri.thome@wilsonelser.com  
*Attorneys for Defendants Shelly Booth Cooley, Esq.  
and the Cooley Law Firm*

DENNIS L. KENNEDY  
PAUL C. WILLIAMS  
BAILEY KENNEDY  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 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/ Sarah Gondek

*An Employee of Cohen Johnson Parker Edwards*

# EXHIBIT 1

# EXHIBIT 1

1 **COHEN JOHNSON PARKER EDWARDS**  
2 H. STAN JOHNSON, ESQ.  
3 Nevada Bar No. 00265  
4 sjohnson@cohenjohnson.com  
5 375 E. Warm Springs Rd., Ste. 104  
6 Las Vegas, Nevada 89119  
7 Tel. 702-823-3500  
8 Fax. 702-823-3400  
9 *Counsel for Plaintiff*

10 **EIGHTH JUDICIAL DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 DAVID JOHN ROSE, an individual,  
13  
14 Plaintiff,

Case No.: A-20-815750-C  
Dept No.: 11

15 vs.

16 REGINA McCONNELL, ESQ., an  
17 individual; McCONNELL LAW LTD., a  
18 Nevada limited liability company;  
19 SHELLY BOOTH COOLEY, ESQ., an  
20 individual; THE COOLEY LAW FIRM, a  
21 Nevada Professional Limited Liability  
22 Company; SARAH JANEEN ROSE, an  
23 individual; DOE INDIVIDUALS I through  
24 X and ROE CORPORATIONS XI through  
25 XX,  
26  
27 Defendants.

28 **DECLARATION OF H. STAN JOHNSON**

I, H. Stan Johnson, declare as follows:

1. Declarant is lead counsel for David Rose in this matter and as is familiar with the facts and circumstances of this case, and makes this Declaration in support of OPPOSITION TO DEFENDANT SARAH JANEEN ROSE'S MOTION TO DISMISS PURSUANT TO NRCP 12(B)(1) AND NRCP 12(B)(5) ("Opposition").

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

Dated this 28th day of September 2020.

H. Stan Johnson, Esq.

# EXHIBIT 2

# EXHIBIT 2

## 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.

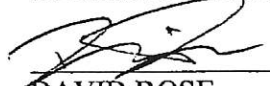
6. The parties shall follow and be subject to Department I's Behavior Order.


7. Sarah is waiving her community waste claim.

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

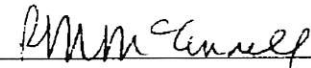
9. Each party acknowledges that they have been represented by counsel in the negotiation and preparation of this agreement, and voluntarily enters the agreement with full understanding of its terms. This agreement may be executed in counterparts.

AFFIRMED AND AGREED

  
\_\_\_\_\_  
DAVID ROSE  
Dated: 3-23-18

  
\_\_\_\_\_  
SARAH ROSE  
Dated: 03/23/2018

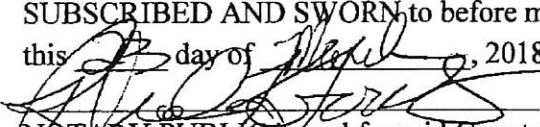
Approved as to Form and Content:

  
\_\_\_\_\_  
REGINA M. McConnell, ESQ.  
Counsel for David Rose

  
\_\_\_\_\_  
SHELLY BOOTH COOLEY, ESQ.  
Counsel for Sarah Rose

STATE OF NEVADA       )  
                                  ) ss:  
COUNTY OF CLARK     )

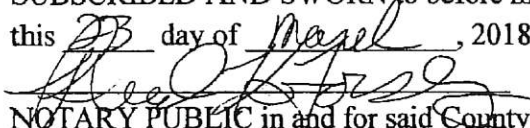
DAVID ROSE did appear before me on the date set forth below, provided appropriate identification, and did sign the foregoing Marital Settlement Agreement as acknowledgement and agreement with its terms.

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



TAB 23

1 **ORDR**

2 Sheri M. Thome, Esq.

3 Nevada Bar No. 008657

4 **WILSON, ELSE, MOSKOWITZ,**

5 **EDELMAN & DICKER LLP**

6 6689 Las Vegas Blvd. South, Suite 200

7 Las Vegas, Nevada 89119

8 Telephone: 702.727.1400

9 Facsimile: 702.727.1401

10 Email: [Sheri.Thome@wilsonelser.com](mailto:Sheri.Thome@wilsonelser.com)

11 *Attorneys for Defendants*

12 *Shelly Booth Cooley and The Cooley Law Firm*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 DAVID JOHN ROSE,

16 Plaintiff,

17 vs.

18 REGINA McCONNELL, ESQ., an individual;  
19 McCONNELL LAW LTD., a Nevada limited  
20 liability company; SHELLEY BOOTH  
21 COOLEY, ESQ., an individual; THE COOLEY  
22 LAW FIRM; a Nevada Professional Limited  
23 Liability Company; SARAH JANEEN ROSE,  
24 an individual; DOE INDIVIDUALS I through  
25 X and ROE CORPORATIONS XI through XX,

26 Defendants.

Case No. A-20-815750-C

Dept. No.: 11

**ORDER RE: DEFENDANTS SHELLEY  
BOOTH COOLEY AND THE COOLEY  
LAW FIRM'S anti-SLAPP MOTION AND  
MOTION TO DISMISS UNDER NRCP  
12(b)(5)**

27 Defendants Shelly Booth Cooley ("Ms. Cooley") and The Cooley Law Firm's ("Cooley Law  
28 Firm") (collectively "Cooley Defendants") anti-Slapp Motion and Motion to Dismiss under NRCP  
12(b)(5), having come on for hearing before the Honorable Elizabeth Gonzalez on September 22,  
2020 at 9:00 a.m., with Kevin Johnson, Esq., of Cohen Johnson Parker Edwards appearing on behalf  
of Plaintiff David John Rose, Sheri M. Thome, Esq. of Wilson, Elser, Moskowitz, Edelman &  
Dicker LLP appearing on behalf of Defendants Shelly Booth Cooley, Esq. and The Cooley Law  
Firm, Joseph P. Garin, Esq. of Lipson Neilson, P.C. appearing on behalf of Defendants McConnell  
Law Ltd. and Regina McConnell Esq., and Paul Williams, Esq. of Bailey Kennedy appearing on  
behalf of Defendant Sarah Janeen Rose.

After considering the briefs submitted by the parties, the arguments of counsel at the hearing, and for good cause shown, the Court finds that the Memorandum of Understanding prepared by Ms. Cooley for the divorce of David John Rose and Sarah Janeen Rose is not between the attorney and Sarah Rose and David Rose, but between Sarah Rose and David Rose. As a result:

**IT IS HEREBY ORDERED** that the Cooley Defendants' Motion to Dismiss is GRANTED under NRCP 12(b)(5) as to Plaintiff's breach of contract claim. The claim is hereby DISMISSED with prejudice.

**IT IS FURTHER ORDERED THAT** the Cooley Defendants' Motion to Dismiss under Nevada's anti-SLAPP statute, NRS 41.660(1)-(2) as to the breach of contract claim is denied, as it was not based upon a "[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a judicial body." As Plaintiff's civil conspiracy claim was previously dismissed with prejudice in the Court's Order dated August 27, 2020, the motion as to that claim is moot.

**ORDER**

GOOD CAUSE APPEARING, IT IS SO ORDERED.

DATED this 5th day of October, 2020.

  
DISTRICT COURT JUDGE

Respectfully Submitted by:

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP

/s/ Sheri M. Thome

Sheri M. Thome, Esq.  
Nevada Bar No. 008657  
6689 Las Vegas Blvd. South, Suite 200  
Las Vegas, Nevada 89119  
Telephone: (702) 727-1400  
Facsimile: (702) 727-1401  
Email: sheri.thome@wilsonelser.com  
*Attorneys for Defendants*  
*Shelly Booth Cooley and The Cooley Law Firm*

Order Re: Defendants Shelly Booth Cooley and The Cooley Law Firm's  
anti-Slapp Motion and Motion To Dismiss Under NRCP 12(b)(5)  
Case No.: A-20-815750-C

Approved as to form and content by:

DATED this 5<sup>th</sup> day of October, 2020.

COHEN JOHNSON PARKER EDWARDS

By: /s/ Kevin M. Johnson  
H. Stan Johnson, Esq.  
Nevada Bar No. 000265  
Kevin M. Johnson, Esq.  
Nevada Bar No. 014551  
375 East Warm Springs Road, Suite 104  
Las Vegas, Nevada 89119  
Email: sjohnson@cohenjohnson.com  
Email: kjohnson@cohenjohnson.com  
*Attorneys for Plaintiff David John Rose*

DATED this 5<sup>th</sup> day of October, 2020.

DATED this 5<sup>th</sup> day of October, 2020.

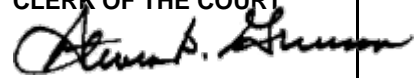
LIPSON NEILSON P.C.

BAILEY KENNEDY

By: /s/ Joseph Garin  
Joseph Garin, Esq.  
Nevada Bar No. 006653  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89114  
Email: jgarin@lipsonneilson.com  
*Attorneys for Defendants McConnell Law  
Ltd. and Regina McConnell Esq.*

By: /s/ Paul C. Williams  
Dennis L. Kennedy, Esq.  
Nevada Bar No. 001462  
Paul C. Williams, Esq.  
Nevada Bar No. 012524  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
Email: DKennedy@BaileyKennedy.com  
Email: PWilliams@BaileyKennedy.com  
*Attorneys for Defendant  
Sarah Janeen Rose*

TAB 24



1 **NEOJ**  
2 Sheri M. Thome, Esq.  
3 Nevada Bar No. 008657  
4 **WILSON, ELSER, MOSKOWITZ,**  
5 **EDELMAN & DICKER LLP**  
6 6689 Las Vegas Blvd. South, Suite 200  
7 Las Vegas, Nevada 89119  
8 Telephone: 702.727.1400  
9 Facsimile: 702.727.1401  
10 Email: [Sheri.Thome@wilsonelser.com](mailto:Sheri.Thome@wilsonelser.com)  
11 *Attorneys for Defendants*  
12 *Shelly Booth Cooley and The Cooley Law Firm*

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 DAVID JOHN ROSE,  
11 Plaintiff,

12 vs.

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

Defendants.

Case No. A-20-815750-C  
Dept. No.: 11

**NOTICE OF ENTRY OF ORDER RE:  
DEFENDANTS SHELLEY BOOTH  
COOLEY AND THE COOLEY LAW  
FIRM'S anti-SLAPP MOTION AND  
MOTION TO DISMISS UNDER NRCP  
12(b)(5)**

19 PLEASE TAKE NOTICE that an Order re: Defendants Shelly Booth Cooley And The  
20 Cooley Law Firm's anti-SLAPP Motion And Motion To Dismiss Under NRCP 12(b)(5) was entered  
21 into the above-captioned matter on October 5, 2020. A copy of the Order is attached hereto.

22 DATED this 5<sup>th</sup> day of October, 2020.

23 WILSON, ELSER, MOSKOWITZ, EDELMAN  
24 & DICKER LLP

25 By: /s/ Sheri M. Thome  
26 Sheri M. Thome, Esq.  
27 Nevada Bar No. 008657  
28 6689 Las Vegas Blvd. South, Suite 200  
Las Vegas, Nevada 89119  
*Attorneys for Defendants Shelly Booth  
Cooley and The Cooley Law Firm*



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, I certify that I am an employee of WILSON, ELSER, MOSKOWITZ,  
3 EDELMAN & DICKER LLP and that on this 5<sup>th</sup> day of October, 2020, I served a true and correct  
4 copy of the foregoing **NOTICE OF ENTRY OF ORDER RE: DEFENDANTS SHELLY**  
5 **BOOTH COOLEY AND THE COOLEY LAW FIRM'S anti-SLAPP MOTION AND**  
6 **MOTION TO DISMISS UNDER NRCP 12(b)(5)** as follows:

- 7 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed  
8 envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- 9 ☒ via electronic means by operation of the Court's electronic filing system, upon each  
party in this case who is registered as an electronic case filing user with the Clerk;
- 10 ☐ via hand-delivery to the addressees listed below;
- 11 ☐ via facsimile;
- 12 ☐ by transmitting via email the document listed above to the email address set forth  
13 below on this date before 5:00 p.m.

14 H. Stan Johnson, Esq.  
Kevin M. Johnson, Esq.  
COHEN JOHNSON PARKER EDWARDS  
15 375 East Warm Springs Road, Suite 104  
Las Vegas, Nevada 89119  
16 Telephone: (702) 823-3500  
Facsimile: (702) 823-3400  
17 Email: sjohnson@cohenjohnson.com  
Email: kjohnson@cohenjohnson.com  
18 *Attorneys for Plaintiff*  
*David John Rose*

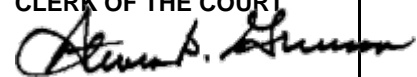
Joseph Garin, Esq.  
LIPSON NEILSON P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89114  
Telephone: (702) 382-1500  
Facsimile: (702) 382-1512  
Email: jgarin@lipsonneilson.com  
*Attorneys for Defendants McConnell Law Ltd.*  
*and Regina McConnell Esq.*

19  
20 Dennis L. Kennedy, Esq.  
Paul C. Williams, Esq.  
BAILEY KENNEDY  
21 8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
22 Telephone: 702.562.8820  
Facsimile: 702.562.8821  
23 Email: DKennedy@BaileyKennedy.com  
Email: PWilliams@BaileyKennedy.com  
24 *Attorneys for Defendant Sarah Janeen Rose*  
*in Conjunction with the Legal Aid Center of*  
25 *Southern Nevada Pro Bono Project*

26  
27 BY: Lani Maile

An Employee of

28 WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP



**ORDR**

Sheri M. Thome, Esq.  
Nevada Bar No. 008657  
**WILSON, ELSE, MOSKOWITZ,  
EDELMAN & DICKER LLP**  
6689 Las Vegas Blvd. South, Suite 200  
Las Vegas, Nevada 89119  
Telephone: 702.727.1400  
Facsimile: 702.727.1401  
Email: [Sheri.Thome@wilsonelser.com](mailto:Sheri.Thome@wilsonelser.com)  
*Attorneys for Defendants  
Shelly Booth Cooley and The Cooley Law Firm*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAVID JOHN ROSE,

Plaintiff,

vs.

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

Defendants.

Case No. A-20-815750-C  
Dept. No.: 11

**ORDER RE: DEFENDANTS SHELLEY  
BOOTH COOLEY AND THE COOLEY  
LAW FIRM'S anti-SLAPP MOTION AND  
MOTION TO DISMISS UNDER NRCP  
12(b)(5)**

Defendants Shelly Booth Cooley ("Ms. Cooley") and The Cooley Law Firm's ("Cooley Law Firm") (collectively "Cooley Defendants") anti-Slapp Motion and Motion to Dismiss under NRCP 12(b)(5), having come on for hearing before the Honorable Elizabeth Gonzalez on September 22, 2020 at 9:00 a.m., with Kevin Johnson, Esq., of Cohen Johnson Parker Edwards appearing on behalf of Plaintiff David John Rose, Sheri M. Thome, Esq. of Wilson, Elser, Moskowitz, Edelman & Dicker LLP appearing on behalf of Defendants Shelly Booth Cooley, Esq. and The Cooley Law Firm, Joseph P. Garin, Esq. of Lipson Neilson, P.C. appearing on behalf of Defendants McConnell Law Ltd. and Regina McConnell Esq., and Paul Williams, Esq. of Bailey Kennedy appearing on behalf of Defendant Sarah Janeen Rose.

After considering the briefs submitted by the parties, the arguments of counsel at the hearing, and for good cause shown, the Court finds that the Memorandum of Understanding prepared by Ms. Cooley for the divorce of David John Rose and Sarah Janeen Rose is not between the attorney and Sarah Rose and David Rose, but between Sarah Rose and David Rose. As a result:

**IT IS HEREBY ORDERED** that the Cooley Defendants' Motion to Dismiss is GRANTED under NRCP 12(b)(5) as to Plaintiff's breach of contract claim. The claim is hereby DISMISSED with prejudice.

**IT IS FURTHER ORDERED THAT** the Cooley Defendants' Motion to Dismiss under Nevada's anti-SLAPP statute, NRS 41.660(1)-(2) as to the breach of contract claim is denied, as it was not based upon a "[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a judicial body." As Plaintiff's civil conspiracy claim was previously dismissed with prejudice in the Court's Order dated August 27, 2020, the motion as to that claim is moot.

**ORDER**

GOOD CAUSE APPEARING, IT IS SO ORDERED.

DATED this 5th day of October, 2020.

  
DISTRICT COURT JUDGE

Respectfully Submitted by:

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP

/s/ Sheri M. Thome

Sheri M. Thome, Esq.  
Nevada Bar No. 008657  
6689 Las Vegas Blvd. South, Suite 200  
Las Vegas, Nevada 89119  
Telephone: (702) 727-1400  
Facsimile: (702) 727-1401  
Email: sheri.thome@wilsonelser.com  
*Attorneys for Defendants*  
*Shelly Booth Cooley and The Cooley Law Firm*

Order Re: Defendants Shelly Booth Cooley and The Cooley Law Firm's  
anti-Slapp Motion and Motion To Dismiss Under NRCP 12(b)(5)  
Case No.: A-20-815750-C

Approved as to form and content by:

DATED this 5<sup>th</sup> day of October, 2020.

COHEN JOHNSON PARKER EDWARDS

By: /s/ Kevin M. Johnson  
H. Stan Johnson, Esq.  
Nevada Bar No. 000265  
Kevin M. Johnson, Esq.  
Nevada Bar No. 014551  
375 East Warm Springs Road, Suite 104  
Las Vegas, Nevada 89119  
Email: sjohnson@cohenjohnson.com  
Email: kjohnson@cohenjohnson.com  
*Attorneys for Plaintiff David John Rose*

DATED this 5<sup>th</sup> day of October, 2020.

DATED this 5<sup>th</sup> day of October, 2020.

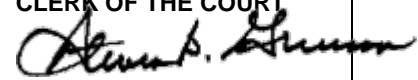
LIPSON NEILSON P.C.

BAILEY KENNEDY

By: /s/ Joseph Garin  
Joseph Garin, Esq.  
Nevada Bar No. 006653  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89114  
Email: jgarin@lipsonneilson.com  
*Attorneys for Defendants McConnell Law  
Ltd. and Regina McConnell Esq.*

By: /s/ Paul C. Williams  
Dennis L. Kennedy, Esq.  
Nevada Bar No. 001462  
Paul C. Williams, Esq.  
Nevada Bar No. 012524  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
Email: DKennedy@BaileyKennedy.com  
Email: PWilliams@BaileyKennedy.com  
*Attorneys for Defendant  
Sarah Janeen Rose*

TAB 25



**RIS (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

**REPLY IN SUPPORT OF DEFENDANT  
SARAH JANEEN ROSE'S MOTION FOR  
ATTORNEY'S FEES**

Date of Hearing: October 16, 2020

Time of Hearing: In Chambers

**I. INTRODUCTION**

David opposes the Motion for Attorney's fees on two flawed grounds. First, David contends that Sarah's partial victory was insignificant and thus this Court should apply a narrow exception to the rule that she should be entitled to attorney's fees. This argument is absurd. Sarah's victory—a dismissal of David's conspiracy-to-defraud claim—resulted in at least three substantial benefits: (i) the dismissal of David's only tort claim; (ii) the elimination of any basis for punitive damages; and (iii) a risk of Sarah being found to have committed fraud. These benefits are far from insignificant, they are critical.

Second, David argues the amount of time expended on the Special Motion to Dismiss is unreasonable—which he apparently viewed as a “commonplace” motion to dismiss that Sarah’s counsel could have simply copied from its prior work. Wrong. The Special Motion to Dismiss required an understanding of the Divorce Action (which has been heavily litigated for over three years), legal research concerning family law (i.e. the impact of the Divorce Decree on David’s claims), and legal research concerning the application of the anti-SLAPP statute to settlement negotiations and agreements. In reality, only approximately 2.0 hours per page was spent related to the briefing on the Special Motion to Dismiss—including time reviewing the filings from the Divorce Action and conducting legal research. Courts routinely find *3 to 4 hours per page* to be a reasonable amount of time.

Finally, David appears to be under the misconception that Sarah is seeking “an award of nearly thirty thousand dollars.”<sup>1</sup> As detailed in the Motion for Attorney’s Fees, Sarah is only seeking half of her attorney’s fees—with the exception of one (1) hour that related solely to the conspiracy-to-defraud claim<sup>2</sup>—as Sarah prevailed on one of two claims.

In sum, this Court should award Sarah her reasonable attorney’s fees in the amount of \$16,567.50<sup>3</sup> under NRS 41.670(b).

## II. ARGUMENT

### A. Sarah’s Victory Provided her with a Major Benefit—David’s only Tort Claim was Dismissed, David Cannot Seek Punitive Damages, and Sarah Cannot be Found to Have Committed Fraud.

David argues the “dismissal of the civil conspiracy cause of action was relatively insignificant” and “did not release [Sarah] from this lawsuit.” (Opp’n at 2:14 – 4:8.) These arguments fail.

---

<sup>1</sup> Opp’n at 6:1-4.

<sup>2</sup> Sarah could have, logically, sought the full amount of time related to the Motion for Attorney’s Fees, but elected not to do so.

<sup>3</sup> Sarah has incurred more time than the additional five hours estimated in the Motion for Attorney’s Fees in responding to David’s Opposition. (See Motion for Attorney’s Fees, Ex. 1, Decl. Paul C. Williams, ¶ 10.) Sarah will not seek those additional attorney’s fees at this time, but reserves the right to do so in the future.

1 Initially, that Sarah’s victory “did not release her from this lawsuit” is immaterial. As  
2 detailed in the Motion for Attorney’s fees, a “***party who partially prevails on an anti-SLAPP***  
3 ***motion must generally be considered a prevailing party*** unless the results of the motion were so  
4 insignificant that the party did not achieve any practical benefit from bringing the motion.” *Mann*  
5 *v. Quality Old Time Serv., Inc.*, 42 Cal. Rptr. 3d 607, 614 (Cal Ct. App. 2006) (emphasis added).

6 Sarah’s victory resulted in tremendous benefits to Sarah. The dismissal of David’s civil  
7 conspiracy-to-defraud claim (on the merits) means that: (i) David no longer has a viable tort claim  
8 against Sarah; (ii) David cannot obtain punitive damages against Sarah; and (iii) Sarah is no longer  
9 at risk of having a fact-finder decide that she committed an act of fraud.

10 David’s *post hac* attempt to minimize his civil conspiracy-to-defraud claim as nothing more  
11 than an ordinary civil conspiracy claim—that is a “legal doctrine” to place liability on non-  
12 tortfeasors—is misplaced. (Opp’n at 3:1 – 4:8.) As explained in the Special Motion to Dismiss,<sup>4</sup>  
13 David’s claim was specifically a civil conspiracy-to-defraud claim—a distinct tort under Nevada  
14 law and to which “***an underlying cause of action for fraud is a necessary predicate.***” *Jordan v.*  
15 *State ex rel. DMV & Pub. Safety*, 121 Nev. 44, 74-75, 110 P.3d 30, 51 (2005) (emphasis added),  
16 *overruled on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181  
17 P.3d 670, 672 n.6 (2008); *accord Goodwin v. Executive Tr. Services, LLC*, 680 F. Supp. 2d 1244,  
18 1254 (D. Nev. 2010) (“Under Nevada law, an actionable civil conspiracy-to-defraud claim exists  
19 when there is (1) a conspiracy agreement; (2) an overt act of fraud in furtherance of the conspiracy;  
20 and (3) resulting damages to the plaintiff.”). David’s civil conspiracy-to-defraud claim—a tort  
21 claim—could have entitled him to punitive damages and Sarah faced the possibility<sup>5</sup> of a fact-finder  
22 determining she had committed fraud. Avoiding these possibilities is a massive victory for Sarah.

23 Further, David’s reliance on *Moran v. Endres*, 37 Cal. Rptr. 3d 786, 788 (Cal. Ct. App.  
24 2006), *as modified* (Jan. 27, 2006), is misplaced. In *Moran*, the plaintiffs had asserted ***eight (8)***  
25 ***claims*** for relief against the defendants: “defamation, placing in a false light, intrusion upon  
26 seclusion, assault, battery, civil conspiracy, intentional infliction of emotional distress,” and

27 <sup>4</sup> Special Motion to Dismiss, filed on July 6, 2020, at 18:27-28 n.11.

28 <sup>5</sup> While David’s fraud allegations were frivolous, they nevertheless subjected Sarah to a potential finding of fraud.



1 “making private facts public.” *Id.* at 787. Defendants filed a special motion to strike under  
2 California’s anti-SLAPP statute, but were only successful in striking one (1) of plaintiffs’ eight (8)  
3 claims. *Id.* The one claim defendants were successful in striking was a traditional civil conspiracy  
4 claim (not a conspiracy-to-defraud claim), which only sought to extend liability to non-tortfeasors.  
5 *Id.* at 788. Accordingly, the court declined to award attorney’s fees because the defendants’ partial  
6 victory on a single claim had no practical benefit—defendants still faced seven (7) tort claims.

7 Put simply, *Moran* was an extreme case that involved a narrow exception to the general rule  
8 that even a partial victory on a special motion to dismiss entitles the moving party to attorney’s  
9 fees. *See Morrow v. Los Angeles Unified Sch. Dist.*, 57 Cal. Rptr. 3d 885, 902 (2007) (Morrow  
10 cannot take advantage of the **narrow exception** recognized in [*Moran*] *v. Endres* . . . because he  
11 does not offer any legal or factual basis for finding that the practical effect of defendants’ victory  
12 was nugatory.” (emphasis added); *Kupfer v. Swab Fin.*, B181781, 2006 Cal. App. Unpub. LEXIS  
13 5143, at \*38 (Cal. Ct. App. June 14, 2006) (“[*Moran v. Endres* dealt with an **extreme set of facts** in  
14 which the defendants’ anti-SLAPP motion prevailed on only one of the many causes of action  
15 alleged-and even that single victory was illusory.”) (emphasis added).

16 Here, unlike *Moran*, Sarah obtained dismissal of David’s only tort claim, his only potential  
17 avenue of obtaining punitive damages, and the possibility of a fact-finder determining that she had  
18 committed fraud. As the California Court of Appeal explained in a similar case:

19 In contrast with the defendants in *Moran*, Tanaka prevailed with  
20 respect to the third and eighth causes of action, which were the **sole**  
21 **claims seeking an award of punitive damages**. By eliminating  
22 these claims, Tanaka limited respondent’s potential recovery, and  
thereby reduced the scope of discovery and the trial. Because the  
results of her motion cannot reasonably be viewed as insignificant  
or devoid of practical benefit to her, she is entitled to a fee award.

23 *Hea Sung Min v. Tan*, No. B202175, 2008 Cal. App. Unpub. LEXIS 3578, at \*27 (Cal. Ct. App.  
24 Apr. 30, 2008) (emphasis added); *accord Shepard v. Miler*, 2011 U.S. Dist. LEXIS 48369, at \*5-6  
25 (E.D. Cal. May 4, 2011) (“Unlike *Moran*, the success of defendants’ anti-SLAPP motion in this  
26 case was neither minor nor technical. . . . With the elimination of the state law claims—**especially**  
27 **the fraud claim**—defendants undeniably narrowed the scope of the lawsuit, limiting discovery,

1 reducing potential recoverable damages, and altering the settlement posture of the case . . . .”)  
2 (emphasis added) (internal quotation marks omitted).

3 In sum, Sarah’s victory on the Special Motion to Dismiss was substantial and she is entitled  
4 to attorney’s fees under NRS 41.670(b).

5 **B. The Attorney’s Fees Sought by Sarah are Reasonable.**

6 David contends that, under an analysis of the *Brunzell* factors, the amount of time spent on  
7 the Special Motion to Dismiss was unreasonable. (Opp’n at 4:9 – 5:25.) This argument fails.

8 First, David argues that while undersigned counsel is an experienced litigator, the time spent  
9 conducting legal research on the many issues involved in the Special Motion to Dismiss was  
10 unreasonable. (Opp’n at 4:14-21.) This argument misses the mark. The Special Motion to Dismiss  
11 required legal research into, among other things: Nevada’s anti-SLAPP statute; Nevada’s anti-  
12 SLAPP case law; California’s anti-SLAPP case law; Nevada’s case law on the survival of marital  
13 agreements after the entry of divorce decree; and Nevada case law on conspiracy-to-defraud claims.

14 Second, David argues that the character of work to be done is simple and that motions to  
15 dismiss are “commonplace.” (Opp’n at 4:21-26.) Incorrect. As explained above and as apparent  
16 from the briefing itself, the Special Motion to Dismiss addressed complex legal issues that required  
17 detailed analysis.

18 Third, David argues the amount of time spent in drafting the Special Motion to Dismiss and  
19 the Reply was unreasonable. David incorrectly states that the “billing only covers one Motion to  
20 Dismiss and its related Reply.” (Opp’n at 4:27 – 5:1.) The billing also covers drafting the Order,  
21 communications with opposing counsel, and researching/drafting the Motion for Attorney’s Fees.<sup>6</sup>  
22 Including the time reviewing the pleadings from this matter and the Divorce Matter, conducting  
23 legal research, and reviewing David’s Opposition to the Special Motion to Dismiss, 68.75 hours  
24 were spent related to the drafting of the 22-page Special Motion to Dismiss and the 12-page Reply.  
25 Thus, approximately 2.0 hours per page were spent researching, drafting, and revising the briefs on  
26

---

27 <sup>6</sup> David cannot, logically, include the time spent drafting the Order on the Special Motion to Dismiss and on the  
28 Motion for Attorney’s Fees in evaluating the reasonableness of the time spent on drafting the Special Motion to Dismiss  
and the Reply Brief.

1 the Special Motion to Dismiss. Courts routinely find **3 to 4 hours per page** to be reasonable in  
2 uncomplicated matters. See, e.g., *Gaines v. Douglas Cty. Sch. Dist.*, No. 3:04-CV-00541-LRH-  
3 RAM, 2009 U.S. Dist. LEXIS 82112, at \*9-10 (D. Nev. Aug. 24, 2009) (finding 4.5 hours per page  
4 spent on appellate brief to be reasonable); *In re Toys “R” Us-Del., Inc. Fair & Accurate Credit*  
5 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 466 (C.D. Cal. 2014) (finding 3 hours per page  
6 reasonable even though the case “was not particularly complex.”); *Walton v. Massanari*, 177 F.  
7 Supp. 2d 359, 365 (E.D. Pa. 2001) (noting the Third Circuit Court of Appeals had found  
8 approximately 3 hours per page spent on a brief was reasonable even though it concerned “one  
9 uncomplicated issue which had been briefed by parties and discussed at length in a well-written and  
10 thorough opinion at the district court level.”). Here, the Special Motion to Dismiss involved  
11 complex issues. Moreover, undersigned counsel respectfully submits that the quality of counsel’s  
12 work product—including the detailed legal research conducted to address the complex issues raised  
13 by this matter—speaks for itself.

14 Fourth, David argues that the Special Motion to Dismiss “did not result in the dismissal of  
15 the main claim against [Sarah] in this lawsuit,” and thus the result is insignificant. (Opp’n at 5:8-  
16 12.) In reality, as explained above, Sarah’s victory was considerable and resulted in (i) the  
17 dismissal of David’s only tort claim; (ii) the elimination of any basis for punitive damages; and (iii)  
18 a risk of Sarah being found to have committed fraud.

19 Finally, David—who attempts to cast himself as a victim even though he initiated this  
20 lawsuit in a transparent effort to gain settlement leverage in the Divorce Action—argues that  
21 because undersigned counsel is representing Sarah on a *pro bono* basis, the fee award should be  
22 reduced. (Opp’n at 5:13-25.) This argument fails. It is well-settled under Nevada law that  
23 attorney’s fees may be awarded to counsel serving in a *pro bono* capacity and that doing so  
24 promotes strong public policy interests. See *Miller v. Wilfong*, 121 Nev. 619, 622–23, 119 P.3d  
25 727, 730 (2005). Moreover, courts routinely reject the notion that fees should be reduced simply  
26 because a party is being represented on a *pro bono* basis. See *Cruz v. Ayromloo*, 66 Cal. Rptr. 3d  
27 725, 731 n.22, 731–32 (Cal. Ct. App. 2d Dist. 2007) (“[O]ur research uncovered no case in which a  
28 trial court reduced a fee award simply because of the ‘pro bono type of work’ involved. Moreover,

1 in the analogous situation of contingent fee and legal aid lawyers—where again the clients are not  
2 responsible for paying legal fees out of their own pockets—the majority of courts have approved  
3 awards at a full level of ‘reasonable’ fees.”) (footnote omitted) (collecting cases); *accord Rosenaur*  
4 *v. Scherer*, 105 Cal. Rptr. 2d 674, 692 (Cal. Ct. App. 2001), *as modified* (Apr. 5, 2001) (rejecting  
5 argument that attorney’s fees should not be awarded under anti-SLAPP statute because party was  
6 represented on partial *pro bono* basis and noting that “[d]enial of fees to outside counsel who offer  
7 their services on a partial pro bono basis would discourage such representation—in conflict with the  
8 [anti-SLAPP] statute’s purpose of not allowing participation in matters of public significance to “be  
9 chilled through abuse of the judicial process.”).

10 In sum, an analysis of the *Brunzell* factors demonstrates that the amount of attorney’s fees  
11 sought by Sarah (\$16,567.50) is reasonable. Under the circumstances—especially given the public  
12 policy considerations of Nevada’s anti-SLAPP statute—such an award is more than equitable.

### 13 III. CONCLUSION

14 Sarah is entitled to attorney’s fees under Nevada’s anti-SLAPP statute. David’s contention  
15 that Sarah’s victory was insignificant is flatly wrong—it resulted in at least three substantial  
16 benefits: (i) the dismissal of David’s only tort claim, (ii) the elimination of any basis for punitive  
17 damages, and (iii) a risk of Sarah being found to have committed fraud. Further, as detailed above,  
18 the amount of time spent on the Special Motion to Dismiss (and this Motion for Attorney’s fees) is  
19 reasonable especially given the complexity of the issues addressed.

20 Accordingly, Sarah respectfully requests this Court award her \$16,567.50 in attorney’s fees.  
21 Further, Sarah respectfully requests that David be required to pay the fee award no later than thirty  
22 (30) days from notice of entry of the fee award.

23 DATED this 9<sup>th</sup> day of October, 2020.

24 BAILEY❖KENNEDY

25 By: /s/ Paul C. Williams

26 DENNIS L. KENNEDY

27 PAUL C. WILLIAMS

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

## CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 9<sup>th</sup> day of October, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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

JOSEPH GARIN  
**LIPSON NEILSON P.C.**  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89114

SHERI THOME  
WILSON ELSER MOSKOWITZ  
EDELMAN & DICKER  
6689 Las Vegas Boulevard, South Suite 200  
Las Vegas, Nevada 89119

/s/ Sharon Murnane  
Employee of BAILEY❖KENNEDY

TAB 26

A-20-815750-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Legal Malpractice**

**COURT MINUTES**

**October 15, 2020**

---

A-20-815750-C      David Rose, Plaintiff(s)  
vs.  
Regina McConnell, ESQ, Defendant(s)

---

**October 15, 2020      3:00 AM      Defendant Sarah Janeen Rose's Motion for Attorney's Fees**

**HEARD BY:** Gonzalez, Elizabeth

**COURTROOM:** Chambers

**COURT CLERK:** Dulce Romea

**PARTIES**      None. Minute order only – no hearing held.

**PRESENT:**

**JOURNAL ENTRIES**

- Matter ADVANCED from the October 16, 2020 chambers calendar.

The Court, having reviewed the motion for fees and the related briefing and being fully informed, GRANTS the motion IN PART, after evaluation of the Brunzell factors and the apportionment provided by counsel, the fees in the amount of \$15030. The Court has awarded the fees as requested for one attorney only (Mr. Williams). The Court declines to set a date for payment. Counsel for movant is directed to submit a proposed order approved by opposing counsel consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order or judgment.

10-29-20      9:00 AM      DEFENDANT SARAH JANEEN ROSE'S MOTION TO DISMISS  
PURSUANT TO NRCP 12(B)(1) AND NRCP 12(B)(5)

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / dr 10-15-20

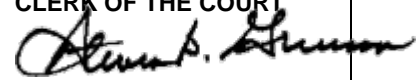
PRINT DATE: 10/15/2020

Page 1 of 1

Minutes Date: October 15, 2020

TAB 27





**RIS (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  
REPLY IN SUPPORT OF HER MOTION TO  
DISMISS PURSUANT TO NRCP 12(b)(1)  
and NRCP 12(b)(5)**

Date of Hearing: October 29, 2020

Time of Hearing: 9:00 a.m.

**I. INTRODUCTION**

David's efforts to avoid dismissal are unavailing. First, this Court lacks subject matter jurisdiction over David's breach of contract claim. As detailed in the Motion to Dismiss, the Nevada Supreme Court has repeatedly held that where a divorce decree does not directly provide for the survival of a pre-decree agreement merged into the decree (like the MOU), that pre-decree agreement is destroyed and the parties' remedies are limited to those available on the decree itself (e.g., a motion to set aside the decree). David's efforts to distinguish controlling authority fall flat. Simply because the MOU states that it will retain its separate contractual nature is irrelevant—this

1 is the same situation that the Nevada Supreme Court addressed in *Day v. Day* where it found that  
2 the “survival provision of a [pre-decree] agreement is *ineffective* unless the court decree  
3 specifically directs survival.”<sup>1</sup> The Divorce Decree does not direct the MOU’s survival—the  
4 analysis stops there. Further, that the MOU is attached to the Divorce Decree is immaterial because  
5 the Divorce Decree neither directs its survival nor incorporates its terms.

6 Second, David’s breach of contract claim is unripe—his damages are speculative given that  
7 he may prevail on his Motion to Set Aside in the Divorce Action. David’s contention that his claim  
8 is ripe because he incurred “damages by having to litigate the issue, pay additional attorney [sic]  
9 fees and suffer through additional litigation,” misses the mark. Even if attorney’s fees constituted  
10 damages for his breach of contract claim (they do not), his damages are still speculative because the  
11 Family Court still has not ruled on his Motion to Set Aside and thus it is unknown whether Sarah  
12 will receive the survivor benefits at all. Regardless, attorney’s fees only constitute damages  
13 (specifically, as special damages) in rare circumstances not pertinent here.

14 Finally, David’s efforts to avoid the parol evidence rule are unavailing. The Divorce Decree  
15 is the final integrated agreement of the parties and supersedes any prior agreements (including the  
16 MOU). As a result, the parol evidence rule prohibits David from using the MOU to attack an  
17 unambiguous term of the Divorce Decree. Again, David’s rabid focus the fact that the MOU was  
18 attached to the Divorce Decree does not change anything. David believes that the attachment of the  
19 MOU to the Divorce Decree means that the MOU survived the Divorce Decree as an independent  
20 contract, or, simultaneously taking a notably inconsistent position, became “part of the [Divorce  
21 Decree].” Unfortunately for David, that is not how it works. The Divorce Decree contains an  
22 unambiguous integration/merger clause that it is the final integrated agreement of the parties and  
23 supersedes any prior agreements, which would include the MOU.

24 In sum, this Court lacks subject matter jurisdiction and, in any event, his claim for breach of  
25 contract is unripe and fails as a matter of law. Accordingly, Sarah respectfully requests that this  
26 Court dismiss David’s breach of contract claim.

---

27  
28 <sup>1</sup> 80 Nev. 386, 389-90, 395 P.2d 321, 322-23 (1964) (emphasis added).

## II. ARGUMENT

### A. **This Court Lacks Subject Matter Jurisdiction as the Divorce Decree did not Direct the Survival of the MOU; thus David’s Remedies are Limited to those Available to Address the Divorce Decree Itself (like his Motion to Set Aside).**

David argues that this Court has subject matter jurisdiction because he believes the MOU retained its separate contractual nature (despite controlling Nevada Supreme Court authority dictating that it did not) and because the terms of the MOU required “performance and completion of certain terms before the [Divorce Decree] ever existed.” (*See* Opp’n at 2:22 – 3:28.) These arguments fail.

First, the fact that the MOU stated that it was to survive the entry of the Divorce Decree and retain its separate contractual nature is immaterial. The facts here are virtually identical to the facts addressed in *Day v. Day*, where the Nevada Supreme Court held that the “survival provision of a [pre-decree] agreement is ineffective unless the court decree specifically directs survival.” 80 Nev. 386, 389-90, 395 P.2d 321, 322-23 (1964). Here, the Divorce Decree did not direct the survival of the MOU. (*See generally* Compl., Ex. 2, Divorce Decree.) Accordingly, as a matter of Nevada law, the MOU was merged into and superseded by the Divorce Decree. *See Vaile v. Porsboll*, 128 Nev. 27, 33 n.7, 268 P.3d 1272, 1276 n.7 (2012) (“[W]hen a support agreement is merged into a divorce decree, the agreement loses its character as an independent agreement, unless both the agreement and the decree direct the agreement’s survival”). As a result, David cannot use contract principles to collaterally attack the Divorce Decree. *See id.* at 33 n.7, 268 P.3d at 1276 n.7 (“Because the parties’ agreement was merged into the divorce decree, to the extent that the district court purported to apply contract principles, specifically, rescission, reformation, and partial performance . . . to support its decision . . . any application of contract principles to resolve the issue [addressed] . . . was improper.”).

Second, simply because the MOU was attached to the Divorce Decree does not mean “that the MOU still exists on its own, outside of [Divorce] Decree . . . .” (Opp’n at 3:13-15.) If anything, the attachment of the MOU to the Divorce indicates the opposite. The Divorce Decree contains an unambiguous integration/merger clause, providing that the “Decree of Divorce contains the entire agreement of the parties on these matters, *superseding any previous agreement between them.*”

(Compl., Ex. 2, Divorce Decree, at 38 (emphasis added).) The attachment of the MOU is an acknowledgement of the prior agreement that Sarah and David agreed was being superseded by the Divorce Decree.

Indeed, if Sarah and David wanted to incorporate the terms of the MOU in the Divorce Decree, they would have expressed such an intent—just like they did with the other two exhibits to the Divorce Decree. The Divorce Decree has three exhibits. Exhibit A is the parties’ Stipulated Parenting Agreement. Sarah and David expressly incorporated the terms of the Stipulated Parenting Agreement into the Divorce Decree by reference: “The terms of the Stipulated Parenting Agreement are ratified, confirmed, and approved by the Court at this time, and the same is incorporated into this Decree of Divorce as though the same were set forth in this Decree in full.” (*Id.* at 5:6-14.) Exhibit C to the Divorce Decree is a Mutual Behavior Order. Sarah and David similarly expressly incorporated the terms of the Mutual Behavior Order by reference: “[T]he terms of which are ratified, confirmed, and approved by the Court at this time, and the same is incorporated into this Decree of Divorce as though the same were set forth in this Decree in full.” (*Id.* at 5:15-23.) Exhibit B to the Divorce Decreed is the MOU. Unlike the Stipulated Parenting Agreement and the Mutual Behavior Order, the terms of the MOU are not expressly incorporated by reference. (*Id.* at 4:26 – 5:4.) Simply put, if Sarah and David intended to incorporate the terms of the MOU into the Divorce Decree or direct its survival, they would have said so expressly—just as they did with the two other exhibits to the Divorce Decree.

Finally, David’s argument that the terms of the MOU required “performance and completion of certain terms before the [Divorce Decree] ever existed,” is misplaced. (*See Opp’n* at 3:15-28.) Even under contractual principles (which are not applicable) the Divorce Decree superseded the MOU, extinguishing any contractual obligations that the parties had under the MOU. *See* Restatement (Second) of Contracts § 213(1) (1981) (“A binding integrated agreement discharges prior agreements to the extent that it is inconsistent with them.”). Accordingly, David cannot assert a claim for breach of contract as to an obligation owed under the MOU.

In sum, because this Court lacks subject matter jurisdiction, this Court should dismiss David’s breach of contract claim against Sarah.

**B. David's Claims are Unripe; He Cannot Create Ripeness by Filing a Lawsuit.**

David asserts that his breach of contract claim is ripe because the alleged breach “occurred when Ms. Rose’s counsel drafted [the Divorce Decree] which did not reflect the terms of the MOU,” and he has suffered harm in the form of having to “pay additional attorney [sic] fees and suffer through additional litigation . . . .” (Opp’n at 4:1-23.) This argument fails.

As explained in the Motion, David’s claims are unripe because they are contingent on the outcome of the Divorce Matter. If David prevails on his pending Motion to Set Aside the Divorce Decree, then the claims asserted in this matter will be moot—he will have suffered no damages. David’s contention that the alleged breach has already occurred is immaterial; his breach of contract is not ripe because “it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all”—namely, the result of David’s pending Motion to Set Aside. *See Texas v. United States*, 523 U.S. 296, 300 (1998).

Further, David’s claim that this matter is ripe because he is litigating the matter is nonsensical. Under David’s logic, ripeness would exist simply because a plaintiff filed a lawsuit; such an exception would entirely nullify the ripeness doctrine. Instead, this matter is akin to a legal malpractice claim (indeed, a claim David has asserted against his prior counsel) where the underlying litigation is not finalized. In such situations, the Nevada Supreme Court has held that, for purposes of evaluating whether the statute of limitations has accrued, “a legal malpractice action does not accrue until the plaintiff’s damages are certain and not contingent upon the outcome of an appeal.” *Semenza v. Nev. Med. Liab. Ins. Co.*, 104 Nev. 666, 668, 765 P.2d 184, 186 (1988). Here, David’s damages are not certain—they are contingent on the outcome of his Motion to Set Aside.

In sum, this Court should dismiss David’s breach of contract because it is unripe—his damages are uncertain (and may not occur at all) depending on the outcome of his Motion to Set Aside.

**C. The Parol Evidence Rule Bars David’s Breach of Contract Claim.**

David contends that the parol evidence rule is inapplicable because the MOU is “within the four corners of the contract” because it is attached to the Divorce Decree and, as a result, “the MOU

1 is part of the DOD,” making “the meaning of the [Divorce Decree] . . . ambiguous.” (Opp’n at 5:7-  
2 19.) David misapprehends the parol evidence rule.

3 As detailed in the Motion to Dismiss, the Divorce Decree is clearly the final integrated  
4 agreement between Sarah and David. The Divorce Decree contains an integration/merger clause,  
5 providing that David and Sarah “expressly agree that this Decree of Divorce contains the entire  
6 agreement of the parties on these matters, superseding any previous agreement between them.”  
7 (Compl., Ex. 2, Divorce Decree, at 38.) Even if one were to disregard the integration/merger  
8 clause, it is evident that the 39-page Divorce Decree, “in view of its completeness and specificity  
9 reasonably appears to be a complete agreement,” and thus should be presumed to be an integrated  
10 agreement—especially considering that the three-page MOU failed to address numerous terms that  
11 were necessary to resolve the Divorce Matter. *See* Restatement (Second) of Contracts § 209(3).  
12 Indeed, the MOU itself contemplates that it does not represent the “final formal agreement” of the  
13 parties. (Compl. Ex. 1, MOU, at 1.) As such, David cannot use parol evidence (such as the MOU)  
14 to “vary or contradict [the Divorce Decree], since all prior negotiations and agreements are deemed  
15 to have been merged therein.” *See Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21  
16 (2001) (internal quotation marks omitted).

17 Simply because the MOU is attached to the Divorce Decree does not make the Divorce  
18 Decree ambiguous. Parties often reference and/or attach prior agreements to their final integrated  
19 agreement. Indeed, given the integration clause of the Divorce Decree and that the MOU was  
20 attached, it is evident the parties intended for the Divorce Decree to supersede the MOU. As  
21 detailed above, if the parties had intended to incorporate the terms of the MOU into the Divorce  
22 Decree, they would have done so expressly—just as they did with the other two exhibits to the  
23 Divorce Decree (the Stipulated Parenting Agreement and the Mutual Behavior Order).

24 In sum, even if this Court were to apply contract principles, such principles dictate that  
25 David’s breach of contract claim is not viable because David cannot use parol evidence to  
26 contradict the express terms of the parties’ integrated agreement (the Divorce Decree). *See Kaldi*,  
27 117 Nev. at 281, 21 P.3d at 21.

III. CONCLUSION

For the reasons set forth above, Sarah respectfully requests the Court dismiss David's claims pursuant to NRCP 12(b)(1) and NRCP 12(b)(5), with prejudice.

DATED this 22<sup>nd</sup> day of October, 2020.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

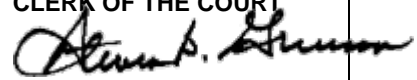
PAUL C. WILLIAMS

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





TAB 28



**ORDR (CIV)**

DENNIS L. KENNEDY

Nevada Bar No. 1462

PAUL C. WILLIAMS

Nevada Bar No. 12524

**BAILEY ♦ KENNEDY**

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

PWilliams@BaileyKennedy.com

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

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID JOHN ROSE, an individual,

Plaintiff,

vs.

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

Defendants.

Case No. A-20-815750-C

Dept. No. ● XI

**ORDER GRANTING DEFENDANT SARAH  
JANEEN ROSE'S MOTION FOR  
ATTORNEY'S FEES**

This matter came before the Court, Department XI (the Honorable Elizabeth Gonzalez presiding), on October 15, 2020 (in chambers) on Defendant Sarah Janeen Rose's Motion for Attorney's Fees (hereinafter, the "Motion for Attorney's Fees").

**FINDINGS**

The Court, having examined the briefs of the parties, the records and documents on file, being fully advised of the premises, and good cause appearing, hereby makes the following Findings with regard to the Motion for Attorney's Fees:

1           1.     On May 29, 2020, Plaintiff David John Rose (“David”) initiated this action by filing  
2 a Complaint against Defendant Sarah Janeen Rose (“Sarah”), among others.

3           2.     David’s Complaint asserted two causes of action against Sarah: civil conspiracy and  
4 breach of contract. (Compl. ¶¶ 40-48.)

5           3.     The Court finds that David’s claim for civil conspiracy, although styled as “Civil  
6 Conspiracy,” is a civil conspiracy-to-defraud claim. (*Id.* ¶ 41 (alleging that Sarah and her counsel  
7 “acted in concert *to intentionally defraud Plaintiff* into signing the legally binding Decree of  
8 Divorce with terms that were not agreed to.”) (emphasis added).) A civil conspiracy-to-defraud  
9 claim is a distinct tort under Nevada law to which “an underlying cause of action for fraud is a  
10 necessary predicate.” *See Jordan v. State ex rel. DMV & Pub. Safety*, 121 Nev. 44, 74-75, 110  
11 P.3d 30, 51 (2005) (emphasis added), *overruled on other grounds by Buzz Stew, LLC v. City of N.*  
12 *Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008); *accord Goodwin v. Executive Tr.*  
13 *Services, LLC*, 680 F. Supp. 2d 1244, 1254 (D. Nev. 2010) (“Under Nevada law, an actionable  
14 civil conspiracy-to-defraud claim exists when there is (1) a conspiracy agreement; (2) an overt act  
15 of fraud in furtherance of the conspiracy; and (3) resulting damages to the plaintiff.”).

16           4.     On July 6, 2020, Sarah filed a special motion dismiss pursuant to NRS 41.660 (the  
17 “Special Motion to Dismiss”). (Defendant Sarah Janeen Rose’s Special Motion to Dismiss  
18 Pursuant to NRS 41.660 (Anti-SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to  
19 NRCp 12(b)(1) and NRCp 12(b)(5), filed on July 6, 2020.)

20           5.     On August 27, 2020, this Court entered an Order that granted, in part, Sarah’s  
21 Special Motion to Dismiss pursuant to Nevada’s anti-SLAPP statute (the “Anti-SLAPP Order”).  
22 (*See Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose’s Special Motion*  
23 *to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP)*, filed on Aug. 27, 2020.)

24           6.     This Court found that David’s civil conspiracy claim against Sarah was subject to  
25 Nevada’s anti-SLAPP statute, but that his breach of contract claim was not. (*See generally id.*)

26           7.     This Court dismissed David’s civil conspiracy pursuant to the anti-SLAPP statute  
27 because David “failed to demonstrate, with ‘prima facie evidence,’ that he ha[d] a ‘probability of  
28 prevailing.’” (*Id.* at 6:3 – 7:2 (quoting NRS 41.660(3)(c)).)

8. Nevada’s anti-SLAPP statute provides that if a court grants a special motion to dismiss, the “court ***shall*** award reasonable costs and attorney’s fees to the person against whom the action was brought . . . .” NRS 41.670(b) (emphasis added).

9. California courts in interpreting California’s anti-SLAPP statute<sup>1</sup> have found that a “party who partially prevails on an anti-SLAPP motion must generally be considered a prevailing party unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion.” *Mann v. Quality Old Time Serv., Inc.*, 42 Cal. Rptr. 3d 607, 614 (Cal Ct. App. 2006) (finding defendant was entitled to attorney’s fees under California’s anti-SLAPP statute even though special motion to strike was granted only as to one of two claims); *accord ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1020, 113 Cal. Rptr. 2d 625, 648-49 (2001) (finding defendant entitled to fees where special motion to strike was only granted as to one of five claims).

10. Further, “an award of fees may include not only the fees incurred with respect to the underlying claim, but also the fees incurred in enforcing the right to mandatory fees . . . .” *Ketchum v. Moses*, 17 P.3d 735, 741 (Cal. 2001).

11. The Court finds that Sarah’s partial success on her Special Motion to Dismiss was not “so insignificant that the party did not achieve any practical benefit from bringing the motion,” and thus Sarah should be considered the prevailing party. *See Mann*, 42 Cal. Rptr. 3d at 614.

12. Specifically, the Court finds that Sarah’s partial success on her Special Motion Dismiss resulted in three substantial benefits: (a) the dismissal of David’s only tort claim; (b) the elimination of any basis for David to seek punitive damages against Sarah; and (c) a risk of Sarah being found to have committed fraud.

---

<sup>1</sup> The Nevada Supreme Court often 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.”).

1           13.     As the Nevada Supreme Court has explained, “in calculating attorney’s fees, the court  
2 should consider the qualities of the advocate, the character of the work to be done, the work actually  
3 performed by the lawyer, and the result.” *Hornwood v. Smith’s Food King No. 1*, 107 Nev. 80, 87,  
4 807 P.2d 208, 213 (1991) (citing *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d  
5 31, 33 (1969)).

6           14.     Further, under Nevada law, attorney’s fees may be awarded to counsel serving in a  
7 *pro bono* capacity. *See Miller v. Wilfong*, 121 Nev. 619, 622–23, 119 P.3d 727, 730 (2005).

8           15.     The Court finds that the Motion for Attorney’s Fees, including the exhibits thereto,  
9 contained sufficient documentation and information concerning the attorney’s fees claimed by Sarah  
10 and that an award of \$15,030.00 attorney’s fees is reasonable.

11          16.     The Court finds that the award of attorney’s fees is supported by the *Brunzell* factors.  
12 Specifically:

13               (a)     With regard to the first *Brunzell* factor, the Court finds that Sarah’s counsel is  
14 qualified, experienced, and competent in handling civil litigation cases. The Court finds that  
15 the hourly rate charged by Paul C. Williams is reasonable, and therefore calculates the  
16 amount of fees to be awarded in favor of Sarah against David with his current rate.

17               (b)     With regard to the second *Brunzell* factor, the Court finds that the work  
18 involved was complex and involved analyzing a great deal of case law concerning Nevada’s  
19 and California’s anti-SLAPP statutes.

20               (c)     With regard to the third *Brunzell* factor, the Court finds that the work actually  
21 performed by Mr. Williams, as detailed in Exhibit 2 to the Motion for Attorney’s Fees, was  
22 reasonably incurred. Further, all of the attorney’s fees awarded are from Mr. Williams, an  
23 associate at Bailey❖Kennedy, whose hourly rate is substantially lower than that of Dennis  
24 L. Kennedy, the partner assigned to the matter.

25               (d)     With regard to the fourth *Brunzell* factor, the Court finds that Sarah’s counsel  
26 achieved a successful result. Sarah successfully obtained a dismissal of David’s civil  
27 conspiracy-to-defraud claim—David’s only tort claim against Sarah, thus avoiding the  
28 possibility of punitive damages and a potential finding of fraud.

**ORDER**

Based on the foregoing Findings and good cause appearing,

**IT IS HEREBY ORDERED** that the Motion for Attorney's Fees is GRANTED; attorney's fees are awarded to Sarah and against David in the amount of \$15,030.00.

DATED this 26th day of October, 2020.

  
\_\_\_\_\_  
THE HONORABLE ELIZABETH GONZALEZ

Respectfully Submitted By:

Approved as to Form and Content By:

BAILEY ♦ KENNEDY

COHEN | JOHNSON | PARKER | EDWARDS

By: /s/ Paul C. Williams  
DENNIS L. KENNEDY  
PAUL C. WILLIAMS  
*Attorneys for Defendant Sarah Janeen Rose*

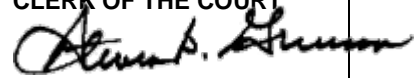
By: /s/ H. Stan Johnson  
H. STAN JOHNSON  
RYAN D. JOHNSON  
375 East Warm Springs Road, Suite 104  
Las Vegas, Nevada 89119  
*Attorneys for Plaintiff David John Rose*

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

~~LIPSON NEILSON P.C.~~

By: \_\_\_\_\_  
JOSEPH GARIN  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89114  
~~*Attorneys for Defendants McConnell Law Ltd.  
and Regina McConnell Esq.*~~

TAB 29



1 **NEOJ (CIV)**

2 DENNIS L. KENNEDY

3 Nevada Bar No. 1462

4 PAUL C. WILLIAMS

5 Nevada Bar No. 12524

6 **BAILEY ❖ KENNEDY**

7 8984 Spanish Ridge Avenue

8 Las Vegas, Nevada 89148-1302

9 Telephone: 702.562.8820

10 Facsimile: 702.562.8821

11 DKennedy@BaileyKennedy.com

12 PWilliams@BaileyKennedy.com

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

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 DAVID JOHN ROSE, an individual,

19 Plaintiff,

20 vs.

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

Defendants.

Case No. A-20-815750-C

Dept. No. XI

**NOTICE OF ENTRY OF  
ORDER GRANTING DEFENDANT SARAH  
JANEEN ROSE'S MOTION FOR  
ATTORNEY'S FEES**

PLEASE TAKE NOTICE that an Order Granting Defendant Sarah Janeen Rose's Motion  
for Attorney's Fees was entered in the above-entitled action on October 26, 2020, a true and

///

///

///

///

///



correct copy of which is attached hereto.

DATED this 27<sup>th</sup> day of October, 2020.

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

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

**CERTIFICATE OF SERVICE**

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

H. STAN JOHNSON	Email: sjohnson@cohenjohnson.com
RYAN D. JOHNSON	rjohnson@cohenjohnson.com
<b>COHEN JOHNSON PARKER EDWARDS</b>	
375 East Warm Springs Road, Suite 104	<i>Attorneys for Plaintiff</i>
Las Vegas, Nevada 89119	<i>David John Rose</i>

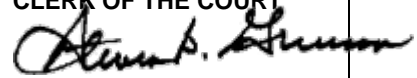
---

JOSEPH GARIN	Email: jgarin@lipsonneilson.com
<b>LIPSON NEILSON P.C.</b>	
9900 Covington Cross Drive, Suite 120	<i>Attorneys for Defendants McConnell Law</i>
Las Vegas, Nevada 89114	<i>Ltd. and Regina McConnell Esq.</i>

---

SHERI THOME	Email: sheri.thome@wilsonelser.com
<b>WILSON ELSEER MOSKOWITZ</b>	
<b>EDELMAN &amp; DICKER</b>	<i>Attorneys for Defendants Shelly Booth</i>
6689 Las Vegas Boulevard, South Suite 200	<i>Cooley, Esq. and the Cooley Law Firm</i>
Las Vegas, Nevada 89119	

/s/ Sharon Murnane  
Employee of BAILEY ♦ KENNEDY



**ORDR (CIV)**

DENNIS L. KENNEDY

Nevada Bar No. 1462

PAUL C. WILLIAMS

Nevada Bar No. 12524

**BAILEY ♦ KENNEDY**

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. ● XI

**ORDER GRANTING DEFENDANT SARAH  
JANEEN ROSE'S MOTION FOR  
ATTORNEY'S FEES**

This matter came before the Court, Department XI (the Honorable Elizabeth Gonzalez presiding), on October 15, 2020 (in chambers) on Defendant Sarah Janeen Rose's Motion for Attorney's Fees (hereinafter, the "Motion for Attorney's Fees").

**FINDINGS**

The Court, having examined the briefs of the parties, the records and documents on file, being fully advised of the premises, and good cause appearing, hereby makes the following Findings with regard to the Motion for Attorney's Fees:

1           1.     On May 29, 2020, Plaintiff David John Rose (“David”) initiated this action by filing  
2 a Complaint against Defendant Sarah Janeen Rose (“Sarah”), among others.

3           2.     David’s Complaint asserted two causes of action against Sarah: civil conspiracy and  
4 breach of contract. (Compl. ¶¶ 40-48.)

5           3.     The Court finds that David’s claim for civil conspiracy, although styled as “Civil  
6 Conspiracy,” is a civil conspiracy-to-defraud claim. (*Id.* ¶ 41 (alleging that Sarah and her counsel  
7 “acted in concert *to intentionally defraud Plaintiff* into signing the legally binding Decree of  
8 Divorce with terms that were not agreed to.”) (emphasis added).) A civil conspiracy-to-defraud  
9 claim is a distinct tort under Nevada law to which “an underlying cause of action for fraud is a  
10 necessary predicate.” *See Jordan v. State ex rel. DMV & Pub. Safety*, 121 Nev. 44, 74-75, 110  
11 P.3d 30, 51 (2005) (emphasis added), *overruled on other grounds by Buzz Stew, LLC v. City of N.*  
12 *Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008); *accord Goodwin v. Executive Tr.*  
13 *Services, LLC*, 680 F. Supp. 2d 1244, 1254 (D. Nev. 2010) (“Under Nevada law, an actionable  
14 civil conspiracy-to-defraud claim exists when there is (1) a conspiracy agreement; (2) an overt act  
15 of fraud in furtherance of the conspiracy; and (3) resulting damages to the plaintiff.”).

16           4.     On July 6, 2020, Sarah filed a special motion dismiss pursuant to NRS 41.660 (the  
17 “Special Motion to Dismiss”). (Defendant Sarah Janeen Rose’s Special Motion to Dismiss  
18 Pursuant to NRS 41.660 (Anti-SLAPP), or, in the Alternative, Motion to Dismiss Pursuant to  
19 NRCp 12(b)(1) and NRCp 12(b)(5), filed on July 6, 2020.)

20           5.     On August 27, 2020, this Court entered an Order that granted, in part, Sarah’s  
21 Special Motion to Dismiss pursuant to Nevada’s anti-SLAPP statute (the “Anti-SLAPP Order”).  
22 (*See Order Granting in Part, and Denying in Part, Defendant Sarah Janeen Rose’s Special Motion*  
23 *to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP)*, filed on Aug. 27, 2020.)

24           6.     This Court found that David’s civil conspiracy claim against Sarah was subject to  
25 Nevada’s anti-SLAPP statute, but that his breach of contract claim was not. (*See generally id.*)

26           7.     This Court dismissed David’s civil conspiracy pursuant to the anti-SLAPP statute  
27 because David “failed to demonstrate, with ‘prima facie evidence,’ that he ha[d] a ‘probability of  
28 prevailing.’” (*Id.* at 6:3 – 7:2 (quoting NRS 41.660(3)(c)).)

8. Nevada’s anti-SLAPP statute provides that if a court grants a special motion to dismiss, the “court *shall* award reasonable costs and attorney’s fees to the person against whom the action was brought . . . .” NRS 41.670(b) (emphasis added).

9. California courts in interpreting California’s anti-SLAPP statute<sup>1</sup> have found that a “party who partially prevails on an anti-SLAPP motion must generally be considered a prevailing party unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion.” *Mann v. Quality Old Time Serv., Inc.*, 42 Cal. Rptr. 3d 607, 614 (Cal Ct. App. 2006) (finding defendant was entitled to attorney’s fees under California’s anti-SLAPP statute even though special motion to strike was granted only as to one of two claims); *accord ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1020, 113 Cal. Rptr. 2d 625, 648-49 (2001) (finding defendant entitled to fees where special motion to strike was only granted as to one of five claims).

10. Further, “an award of fees may include not only the fees incurred with respect to the underlying claim, but also the fees incurred in enforcing the right to mandatory fees . . . .” *Ketchum v. Moses*, 17 P.3d 735, 741 (Cal. 2001).

11. The Court finds that Sarah’s partial success on her Special Motion to Dismiss was not “so insignificant that the party did not achieve any practical benefit from bringing the motion,” and thus Sarah should be considered the prevailing party. *See Mann*, 42 Cal. Rptr. 3d at 614.

12. Specifically, the Court finds that Sarah’s partial success on her Special Motion Dismiss resulted in three substantial benefits: (a) the dismissal of David’s only tort claim; (b) the elimination of any basis for David to seek punitive damages against Sarah; and (c) a risk of Sarah being found to have committed fraud.

---

<sup>1</sup> The Nevada Supreme Court often 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.”).

1           13.     As the Nevada Supreme Court has explained, “in calculating attorney’s fees, the court  
2 should consider the qualities of the advocate, the character of the work to be done, the work actually  
3 performed by the lawyer, and the result.” *Hornwood v. Smith’s Food King No. 1*, 107 Nev. 80, 87,  
4 807 P.2d 208, 213 (1991) (citing *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d  
5 31, 33 (1969)).

6           14.     Further, under Nevada law, attorney’s fees may be awarded to counsel serving in a  
7 *pro bono* capacity. *See Miller v. Wilfong*, 121 Nev. 619, 622–23, 119 P.3d 727, 730 (2005).

8           15.     The Court finds that the Motion for Attorney’s Fees, including the exhibits thereto,  
9 contained sufficient documentation and information concerning the attorney’s fees claimed by Sarah  
10 and that an award of \$15,030.00 attorney’s fees is reasonable.

11          16.     The Court finds that the award of attorney’s fees is supported by the *Brunzell* factors.  
12 Specifically:

13               (a)     With regard to the first *Brunzell* factor, the Court finds that Sarah’s counsel is  
14 qualified, experienced, and competent in handling civil litigation cases. The Court finds that  
15 the hourly rate charged by Paul C. Williams is reasonable, and therefore calculates the  
16 amount of fees to be awarded in favor of Sarah against David with his current rate.

17               (b)     With regard to the second *Brunzell* factor, the Court finds that the work  
18 involved was complex and involved analyzing a great deal of case law concerning Nevada’s  
19 and California’s anti-SLAPP statutes.

20               (c)     With regard to the third *Brunzell* factor, the Court finds that the work actually  
21 performed by Mr. Williams, as detailed in Exhibit 2 to the Motion for Attorney’s Fees, was  
22 reasonably incurred. Further, all of the attorney’s fees awarded are from Mr. Williams, an  
23 associate at Bailey❖Kennedy, whose hourly rate is substantially lower than that of Dennis  
24 L. Kennedy, the partner assigned to the matter.

25               (d)     With regard to the fourth *Brunzell* factor, the Court finds that Sarah’s counsel  
26 achieved a successful result. Sarah successfully obtained a dismissal of David’s civil  
27 conspiracy-to-defraud claim—David’s only tort claim against Sarah, thus avoiding the  
28 possibility of punitive damages and a potential finding of fraud.

**ORDER**

Based on the foregoing Findings and good cause appearing,

**IT IS HEREBY ORDERED** that the Motion for Attorney's Fees is GRANTED; attorney's fees are awarded to Sarah and against David in the amount of \$15,030.00.

DATED this 26th day of October, 2020.

  
\_\_\_\_\_  
THE HONORABLE ELIZABETH GONZALEZ

Respectfully Submitted By:

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

*Attorneys for Defendant Sarah Janeen Rose*

Approved as to Form and Content By:

COHEN | JOHNSON | PARKER | EDWARDS

By: /s/ H. Stan Johnson

H. STAN JOHNSON

RYAN D. JOHNSON

375 East Warm Springs Road, Suite 104

Las Vegas, Nevada 89119

*Attorneys for Plaintiff David John Rose*

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

~~LIPSON NEILSON P.C.~~

~~By: \_\_\_\_\_~~

~~JOSEPH GARIN~~

~~9900 Covington Cross Drive, Suite 120~~

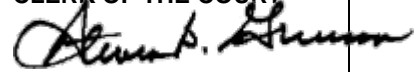
~~Las Vegas, Nevada 89114~~

~~*Attorneys for Defendants McConnell Law Ltd.*~~

~~*and Regina McConnell Esq.*~~

TAB 30





**ORDR (CIV)**

DENNIS L. KENNEDY

Nevada Bar No. 1462

PAUL C. WILLIAMS

Nevada Bar No. 12524

**BAILEY ♦ KENNEDY**

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

PWilliams@BaileyKennedy.com

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAVID JOHN ROSE, an individual,

Plaintiff,

vs.

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

Defendants.

Case No. A-20-815750-C

Dept. No. ● XI

**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**

This matter came before the Court, Department XI (the Honorable Elizabeth Gonzalez presiding), on October 29, 2020 on Defendant Sarah Janeen Rose's Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) (hereinafter, the "Motion to Dismiss").

**APPEARANCES**

- Kevin M. Johnson on behalf of Plaintiff David John Rose ("David");
- Paul C. Williams on behalf of Defendant Sarah Janeen Rose ("Sarah"); and
- Joseph P. Garin on behalf of Defendants Regina McConnell Esq. and McConnell Law Ltd. (the "McConnell Defendants").

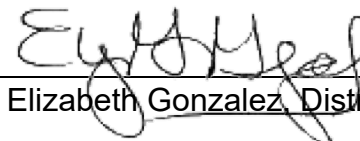
**ORDER**

Having examined the briefs of the parties, the records and documents on file, being fully advised of the premises, and good cause appearing,

**IT IS HEREBY ORDERED** that the Motion to Dismiss is DENIED without prejudice.

**IT IS FURTHER ORDERED** that the matter is STAYED pending resolution of the divorce 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.

**IT IS FURTHER ORDERED** that a status check is SET for April 30, 2021 (in chambers).

 December 10, 2020  
Elizabeth Gonzalez, District Court Judge

Respectfully Submitted By:

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

*Attorneys for Defendant Sarah Janeen Rose*

Approved as to Form and Content By:

COHEN | JOHNSON | PARKER | EDWARDS

By: /s/ Ryan D. Johnson

H. STAN JOHNSON

RYAN D. JOHNSON

375 East Warm Springs Road, Suite 104

Las Vegas, Nevada 89119

*Attorneys for Plaintiff David John Rose*

Approved as to Form and Content By:

LIPSON NEILSON P.C.

By: /s/ Joseph Garin

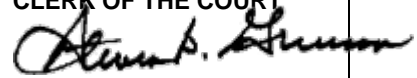
JOSEPH GARIN

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89114

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

TAB 31



**NEOJ (CIV)**

DENNIS L. KENNEDY

Nevada Bar No. 1462

PAUL C. WILLIAMS

Nevada Bar No. 12524

**BAILEY ♦ KENNEDY**

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

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. XI

**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**

PLEASE TAKE NOTICE that an 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 was entered in

///

///

///

///

///

///

1 the above-entitled action on December 10, 2020, a true and correct copy of which is attached hereto.

2 DATED this 14th day of December, 2020.

3 BAILEY ♦ KENNEDY

4 By: /s/ Paul C. Williams

5 DENNIS L. KENNEDY

6 PAUL C. WILLIAMS

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

**CERTIFICATE OF SERVICE**

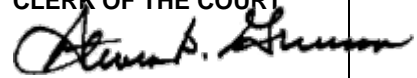
I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 14th day of December, 2020, service of the foregoing **NOTICE OF ENTRY OF ORDER: (1) DENYING DEFENDANT SARAH JANEEN ROSE’S MOTION TO DISMISS PURSUANT TO NRCP 12(B)(1) AND NRCP 12(B)(5); AND (2) STAYING MOTION** was made by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

H. STAN JOHNSON	Email: sjohnson@cohenjohnson.com
RYAN D. JOHNSON	rjohnson@cohenjohnson.com
<b>COHEN JOHNSON PARKER EDWARDS</b>	
375 East Warm Springs Road, Suite 104	<i>Attorneys for Plaintiff</i>
Las Vegas, Nevada 89119	<i>David John Rose</i>

JOSEPH GARIN	Email: jgarin@lipsonneilson.com
<b>LIPSON NEILSON P.C.</b>	
9900 Covington Cross Drive, Suite 120	<i>Attorneys for Defendants McConnell Law</i>
Las Vegas, Nevada 89114	<i>Ltd. and Regina McConnell Esq.</i>

SHERI THOME	Email: sheri.thome@wilsonelser.com
<b>WILSON ELSEER MOSKOWITZ</b>	
<b>EDELMAN &amp; DICKER</b>	<i>Attorneys for Defendants Shelly Booth</i>
6689 Las Vegas Boulevard, South Suite 200	<i>Cooley, Esq. and the Cooley Law Firm</i>
Las Vegas, Nevada 89119	

/s/ Stephanie M. Kishi  
Employee of BAILEY ♦ KENNEDY



**ORDR (CIV)**

DENNIS L. KENNEDY

Nevada Bar No. 1462

PAUL C. WILLIAMS

Nevada Bar No. 12524

**BAILEY ♦ KENNEDY**

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

PWilliams@BaileyKennedy.com

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAVID JOHN ROSE, an individual,

Plaintiff,

vs.

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

Defendants.

Case No. A-20-815750-C

Dept. No. ● XI

**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**

This matter came before the Court, Department XI (the Honorable Elizabeth Gonzalez presiding), on October 29, 2020 on Defendant Sarah Janeen Rose's Motion to Dismiss Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) (hereinafter, the "Motion to Dismiss").

**APPEARANCES**

- Kevin M. Johnson on behalf of Plaintiff David John Rose ("David");
- Paul C. Williams on behalf of Defendant Sarah Janeen Rose ("Sarah"); and
- Joseph P. Garin on behalf of Defendants Regina McConnell Esq. and McConnell Law Ltd. (the "McConnell Defendants").

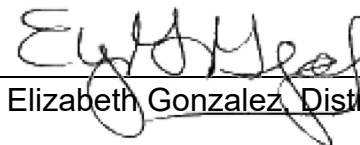
**ORDER**

Having examined the briefs of the parties, the records and documents on file, being fully advised of the premises, and good cause appearing,

**IT IS HEREBY ORDERED** that the Motion to Dismiss is DENIED without prejudice.

**IT IS FURTHER ORDERED** that the matter is STAYED pending resolution of the divorce 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.

**IT IS FURTHER ORDERED** that a status check is SET for April 30, 2021 (in chambers).

 December 10, 2020  
Elizabeth Gonzalez, District Court Judge

Respectfully Submitted By:

BAILEY ♦ KENNEDY

By: /s/ Paul C. Williams

DENNIS L. KENNEDY

PAUL C. WILLIAMS

*Attorneys for Defendant Sarah Janeen Rose*

Approved as to Form and Content By:

COHEN | JOHNSON | PARKER | EDWARDS

By: /s/ Ryan D. Johnson

H. STAN JOHNSON

RYAN D. JOHNSON

375 East Warm Springs Road, Suite 104

Las Vegas, Nevada 89119

*Attorneys for Plaintiff David John Rose*

Approved as to Form and Content By:

LIPSON NEILSON P.C.

By: /s/ Joseph Garin

JOSEPH GARIN

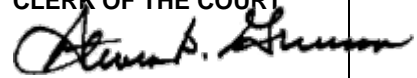
9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89114

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



TAB 32



1 **SR (CIV)**

2 DENNIS L. KENNEDY

3 Nevada Bar No. 1462

4 PAUL C. WILLIAMS

5 Nevada Bar No. 12524

6 **BAILEY ♦ KENNEDY**

7 8984 Spanish Ridge Avenue

8 Las Vegas, Nevada 89148-1302

9 Telephone: 702.562.8820

10 Facsimile: 702.562.8821

11 DKennedy@BaileyKennedy.com

12 PWilliams@BaileyKennedy.com

13 *Attorneys for Defendant Sarah Janeen Rose*

14 *in Conjunction with the Legal Aid Center of*

15 *Southern Nevada Pro Bono Project*

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 DAVID JOHN ROSE, an individual,

19 Plaintiff,

20 vs.

21 REGINA McCONNELL, ESQ., an individual;  
22 McCONNELL LAW LTD., a Nevada limited  
23 liability company; SHELLEY BOOTH COOLEY,  
24 ESQ., an individual; THE COOLEY LAW  
25 FIRM, a Nevada Professional Limited Liability  
26 Company; SARAH JANEEN ROSE, an  
27 individual; DOE INDIVIDUALS I through X  
28 and ROE CORPORATIONS XI through XX,

Defendants.

Case No. A-20-815750-C

Dept. No. 11

**STATUS REPORT**

Plaintiff David John Rose (“David”); Defendants The Cooley Law Firm and Shelly Booth Cooley (jointly, the “Cooley Parties”); and Defendant Sarah Janeen Rose (“Sarah”) (collectively, the “Parties”) hereby submit the following status report pursuant to this Court’s October 29, 2020, minute order:

1. On December 10, 2020, this Court stayed (the “Stay”) this matter “pending resolution of the divorce 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.” (*See* Order, filed Dec. 10, 2020, at 2:5-9.)

2. The Divorce Action is still pending. It is contemplated that the issue of David's survivor benefits, among other issues, will be addressed either through a petition for extraordinary writ relief or through a new trial.

3. Accordingly, the Parties respectfully request that the Court continue its Stay and set a status check on or after November 1, 2021.

DATED this 29<sup>th</sup> day of April, 2021.

BAILEY ♦ KENNEDY

COHEN | JOHNSON | PARKER | EDWARDS

By: /s/ Paul C. Williams

By: /s/ Ryan D. Johnson

DENNIS L. KENNEDY

H. STAN JOHNSON

PAUL C. WILLIAMS

RYAN D. JOHNSON

*Attorneys for Defendant Sarah Janeen Rose*

375 East Warm Springs Road, Suite 104  
Las Vegas, Nevada 89119

*Attorneys for Plaintiff David John Rose*

LIPSON NEILSON P.C.

By: /s/ Joseph Garin

JOSEPH GARIN

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89114

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

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 29<sup>th</sup> day of April, 2021, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

H. STAN JOHNSON	Email: sjohnson@cohenjohnson.com
RYAN D. JOHNSON	rjohnson@cohenjohnson.com
<b>COHEN JOHNSON PARKER EDWARDS</b>	
375 East Warm Springs Road, Suite 104	<i>Attorneys for Plaintiff</i>
Las Vegas, Nevada 89119	<i>David John Rose</i>

---

JOSEPH GARIN	Email: jgarin@lipsonneilson.com
<b>LIPSON NEILSON P.C.</b>	
9900 Covington Cross Drive, Suite 120	<i>Attorneys for Defendants McConnell Law</i>
Las Vegas, Nevada 89114	<i>Ltd. and Regina McConnell Esq.</i>

---

SHERI THOME	Email: sheri.thome@wilsonelser.com
<b>WILSON ELSEER MOSKOWITZ</b>	
<b>EDELMAN &amp; DICKER</b>	<i>Attorneys for Defendants Shelly Booth</i>
6689 Las Vegas Boulevard, South Suite 200	<i>Cooley, Esq. and the Cooley Law Firm</i>
Las Vegas, Nevada 89119	

/s/ Sharon Murnane  
Employee of BAILEY ♦ KENNEDY

TAB 33

A-20-815750-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Legal Malpractice**

**COURT MINUTES**

**April 30, 2021**

---

A-20-815750-C      David Rose, Plaintiff(s)  
vs.  
Regina McConnell, ESQ, Defendant(s)

---

**April 30, 2021      3:00 AM      Status Check: Family Court Proceedings**

**HEARD BY:** Gonzalez, Elizabeth      **COURTROOM:** Chambers

**COURT CLERK:** Jacqueline Smith

**PARTIES**      None. Minute order only - no hearing held.  
**PRESENT:**

**JOURNAL ENTRIES**

- The Court reviewed the final receiver's Status Report, filed 4/29/21. COURT ORDERED, this matter is SET for Status Check Re: Stay on 11/5/21 chambers calendar.

11/5/21 (CHAMBERS) Status Check Re: Stay

CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. / js (5-3-21)

PRINT DATE: 05/03/2021

Page 1 of 1

Minutes Date: April 30, 2021

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 7<sup>th</sup> 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