Case No. 81859

IN THE SUPREME COURT OF THE STATE OF NEVADA

SARAH JANEEN ROSE,

Appellant,

vs.

DAVID JOHN ROSE,

Respondent.

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

APPELLANT SARAH JANEEN ROSE'S REPLY BRIEF

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I. INTRODUCTION

David attempts to evade the anti-SLAPP statute, this Court's well-established law on divorce decrees, and the parol evidence rule by rabidly focusing on the MOU to the exclusion of all other facts—begging this Court to ignore that the parties executed the Divorce Decree. In essence, David argues that his breach of contract of claim is somehow temporally isolated to the point where the parties had executed the MOU and Sarah had drafted the Divorce Decree, but before the parties executed and submitted the Divorce Decree to the Family Court. This is nonsense. Neither physics nor the law enable David to travel back in time to assert a breach of contract claim and ignore the subsequent final integrated agreement of the parties (the Divorce Decree).

Initially, David's efforts to take his breach of contract claim outside of the purview of the anti-SLAPP statute are unpersuasive. David argues that his claim concerns "actions" and not "communications." However, courts hold that the anti-SLAPP statute applies to ***communicative conduct***. Here, David's breach of contract claim is ***expressly*** based upon his theory that Sarah breached the MOU by drafting the Divorce Decree (***a court document***), adding a term to it that was not in

the MOU,[1] having David sign it, and ***submitting it to the district court judge***. This is communicative conduct that falls squarely within the anti-SLAPP statute. Indeed, the California Supreme Court has held that breach of contract claims arising from the negotiation and execution of settlement documents are subject to California's anti-SLAPP statute.

Indeed, it is important to recognize this lawsuit for what it is: a transparent effort by David to gain negotiating leverage over Sarah, his ex-wife, in the Divorce Action and force settlement terms more favorable to him. David believes that the survivor benefits provision was incorrectly included in the Divorce Decree, and he has sought to address the issue in the Divorce Action. But he did not stop there. He decided to create a two-front war by filing this civil action—likely believing he had more financial resources and would win in a war of attrition,[2] forcing Sarah to surrender. This is the archetype of an abusive strategic lawsuit that the anti-SLAPP statute was intended to address.

Given that David's claim is subject to the anti-SLAPP statute, he had the burden to demonstrate, with prima facie evidence, a probability of prevailing on

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[1] There were numerous terms added to the Divorce Decree that were not in the MOU (*see* Op. Br. at 3:14 – 4:6), but David only complains about one added term concerning survivor benefits from his PERS pension (1 JA 1, at 8-9).

[2] Indeed, Sarah was forced to seek pro bono legal services. (1 JA 6, at 102.)

his claim. David failed to meet this burden; his claim fails as a matter of law for three independent reasons.

First, this 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 this Court's well-established law on divorce decrees fall flat. Simply because the MOU states that it will retain its separate contractual nature is irrelevant—this is the same situation that this Court addressed in *Day v. Day* where it found that the "survival provision of a [pre-decree] agreement is ***ineffective*** unless the court decree specifically directs survival."[3] Because the Divorce Decree does not direct the MOU's survival, the analysis ends there. As a result, the district court lacks subject-matter jurisdiction over David's breach of contract claim because David's remedies are limited to those available to him on the Divorce Decree itself—of which the Family Court has exclusive jurisdiction.

Second, David's breach of contract claim is barred by the parol evidence rule as the Divorce Decree is, expressly, the final integrated agreement of the

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[3] 80 Nev. 386, 389-90, 395 P.2d 321, 322-23 (1964) (emphasis added).

parties. David's arguments to avoid the parol evidence rule are unpersuasive. David essentially asks this Court to disregard the Divorce Decree and look only at the MOU—but that is exactly what the parol evidence rule prohibits. The Divorce Decree is the final integrated agreement of the parties and ***expressly*** supersedes any prior agreements (including the MOU). As a result, the parol evidence rule prohibits David from using the MOU to collaterally attack an unambiguous term of the Divorce Decree.

Finally, David's argument that his claim is ripe because he has incurred attorney's fees litigating over the Divorce Decree misses the mark. Even if attorney's fees constituted damages for his breach of contract claim (they do not), his damages are still speculative because the family court still has not ruled on his Motion to Set Aside and thus it is unknown whether Sarah will receive the survivor benefits at all.

In sum, David's breach of contract claim is subject to the anti-SLAPP statute and David failed to meet his burden to demonstrate, with prima facie evidence, a probability of prevailing on his claim. Accordingly, Sarah respectfully requests that this Court vacate the portion of the district court's Order denying Sarah's Special Motion to Dismiss as to David's breach of contract claim and remand with instructions to the district court to grant the Special Motion to Dismiss in its entirety.

II. ARGUMENT

A. Step One: David's Breach of Contract Claim is Subject to the anti-SLAPP Statute.

David argues that his breach of contract claim is not subject to the anti-SLAPP statute because his claims are based on "action" and not "communications." (Ans. Br. at 10-14.) This argument fails.

The anti-SLAPP statute applies to "***communicative conduct*** such as the filing, funding, and prosecution of a civil action." *See Rusheen v. Cohen*,128 P.3d 713, 718 (Cal. 2006) (emphasis added); *see also Allstate Ins. Co. v. Belsky*, No. 2:15-cv-02265-MMD-CWH, 2017 WL 7199651, at *3 (D. Nev. Mar. 31, 2017) (finding party's "petition[ing] a court for redress" was "an activity which California courts interpreting California's corresponding statute have found qualifies as a good faith communication in furtherance of the right to petition," and was thus subject to Nevada's anti-SLAPP statute) (internal quotation marks omitted); *accord John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 751, 219 P.3d 1276, 1280 (2009) (affirming district court's application of Nevada's Anti-SLAPP statute where it found defendants' "***actions*** were protected activity under the anti-SLAPP statute…") (emphasis added), *superseded by statute on other grounds Delucchi v. Songer*, 133 Nev. 290, 296, 396 P.3d 826, 831 (2017). Indeed, as this Court has explained, the plain language of the anti-SLAPP statute "does not exclude any particular claim for relief from its scope because its focus is

on the defendant's *activity*, not the form of the plaintiff's claims for relief." *Omerza v. Fore Stars, Ltd*, No. 76273, 2020 WL 406783, at *1 (Nev. Jan. 23, 2020) (unpublished disposition).

Importantly, the California Supreme Court[4] has ruled—in an opinion that has been cited twice by this Court with approval[5]—that claims such as breach of contract and fraud arising from the negotiation and execution of settlement documents are subject to anti-SLAPP. *See Navellier v. Sletten*, 52 P.3d 703, 709 (Cal. 2002) (hereinafter "*Navellier I*") (finding plaintiffs' claims for breach of contract and fraud were subject to anti-SLAPP because defendant's "negotiation and execution of" the settlement agreement "involved 'statement[s] or writing[s] made in connection with an issue under consideration or review by a … judicial body.'") (alterations in original) (emphasis added) (quoting Cal. Civ. Proc. Code § 425.16(e)(2)); *accord Navarro v. IHOP Props.*, Inc., 36 Cal. Rptr. 3d 385, 391-92

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[4] As explained in the Opening Brief and this Court recently confirmed, this Court relies on California case law analyzing its anti-SLAPP statute. *See Williams v. Lazer*, 137 Nev. Adv. Op. 44, 495 P.3d 93, 99 (2021) ("***California authority*** … ***is instructive in deciding anti-SLAPP cases***.") (emphasis added); *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 756, 219 P.3d 1276, 1283 (2009) ("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.").

[5] *See Abrams v. Sanson*, 136 Nev. 83, 91, 458 P.3d 1062, 1069 (2020); Omerza, No. 76273, 2020 WL 406783, at *1.

(Cal. Ct. App. 2005) (finding claim that defendant defrauded plaintiff into signing stipulated judgment was subject to anti-SLAPP); *Dowling v. Zimmerman*, 103 Cal. Rptr. 2d 174, 190 (Cal. Ct. App. 2001) (finding anti-SLAPP applied to plaintiff's claims, including a claim for fraud, where "complaint arose from [defendant's] acts of negotiating a stipulated settlement.").

Here, David's Complaint is clear: his breach of contract claim is expressly based on the theory that Sarah breached the MOU by "***drafting*** the Decree of a Divorce" with a term entitling her to survivor benefits and "[***s***]***ubmitted*** the Decree of Divorce [to the court] so that its terms become legally enforceable." (1 JA 1, at 9 (emphasis added).) Sarah's negotiations with David, her drafting of the Divorce Decree (through her counsel), and her submission of the Divorce Decree to the Family Court (through her counsel) are all written and alleged oral statements made in direct connection with an issue (the Divorce Action) under consideration by a judicial body (the Family Court). Accordingly, David's claims against Sarah are based on her "[w]ritten or oral statement[s] made in direct connection with an issue under consideration by a … judicial body," and are thus subject to Nevada's anti-SLAPP statute. *See* NRS 41.637(3); *Navellier*, 52 P.3d at 709; *Navarro*, 36 Cal. Rptr. 3d at 391-92; *Dowling*, 103 Cal. Rptr. 2d at 190.

David's reliance on *Panicaro v. Crowley*, No. 67840, 2017 WL 253581 (Nev. Ct. App., Jan. 5, 2017), an unpublished disposition of the Nevada Court of

Appeals is both improper and ineffective. Initially, "unpublished dispositions issued by the Court of Appeals ***may not be cited in any Nevada court for any purpose***." NRAP 36(c)(2) (emphasis added). Regardless, *Panicaro* does not help David's cause. The Court in *Panicaro* held that a breach of contract claim premised upon a failure to perform under an employment agreement—a claim which was not based on any statements or communicative conduct directed to a court—was not subject to the anti-SLAPP statute. *Id.* at *2. That is, the breach did not fit within the four categories of communications that are subject to the anti-SLAPP statute. *See id.* Here, unlike *Panicaro*, David's claim concerns the Divorce Action. His claim is expressly based on the parties' settlement negotiations, Sarah's drafting of the Divorce Decree, and Sarah's submission of the Divorce Decree to the Family Court—all of which fall squarely within Nevada's anti-SLAPP statute.

Further, David's reliance on the California Court of Appeals discussion of the litigation privilege in *Navellier v. Sletten*, 131 Cal. Rptr. 2d 201 (Cal. Ct. App. 2003) (hereinafter, "*Navellier II*") does not help his cause. At the outset, it appears that David's argument hinges on his incorrect belief that the anti-SLAPP statute and the litigation privilege are same thing. (Ans. Br. at 12-13 ("[T]he anti-SLAPP statutes, often referred to as the litigation privilege…").) Plainly, they are not. Regardless, in *Navellier II*, a defendant raised the litigation privilege under the

second step of the anti-SLAPP statute. *Id.* at 209-10. The California Supreme Court had already established that the breach of contract claim was within the anti-SLAPP statute (i.e. the first step) in *Navellier I. See Navellier II,* 131 Cal. Rptr. 2d at 203-04 ("We previously concluded that defendant's motion did not satisfy the first prong of the test, and thus did not reach the second prong. The Supreme Court found that the first prong was satisfied, and has directed us to address the second prong.") (citing *Navellier I*, 124 Cal. Rptr. 2d at 713).[6] Here, Sarah did not raise the litigation privilege as a defense to David's breach of contract claim in her Special Motion to Dismiss and thus whether it applies is irrelevant for purposes of this appeal.[7]

In sum, Sarah met her initial burden of demonstrating, by a preponderance of the evidence, that the breach of contract claim is subject to the anti-SLAPP statute. As a result, the burden of proof shifted to David to demonstrate, with

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[6] This Court recently addressed the application of the litigation privilege under the second step of the anti-SLAPP statute. *See Williams*, 137 Nev. Adv. Op. 44, 495 P.3d at 99 (holding "the absolute litigation privilege applies at the second prong of the anti-SLAPP analysis because a plaintiff cannot show a probability of prevailing on his claim if a privilege applies to preclude the defendant's liability.").

[7] Notably, in *Navellier II*, the California Court of Appeals ultimately directed the dismissal of the breach of contract claim under the anti-SLAPP statute on other grounds (i.e., other than the litigation privilege). One basis was that the plaintiff had failed to adduce prima facie evidence of damages—***attorney's fees incurred were not cognizable damages***. *Id.* at 211.

"prima facie evidence," that he has a "probability of prevailing on" his claims. *See* NRS 41.660(3)(a), (3)(c). He failed to do so.

B. Step Two: David's Breach of Contract Claim Fails.

1. The District Court Lacks Subject Matter Jurisdiction.

David attempts to distinguish this Court's longstanding decisions on divorce decrees destroying pre-decree agreements (unless certain conditions are met) by arguing that his claim is premised on the breach occurring before merger (i.e. before the Divorce Decree was entered). (Ans. Br. at 16-18.) This argument is nothing more than an attempt to ignore this Court's holdings in *Day v. Day*, 80 Nev. 386, 395 P.2d 321 (1964) and *Vaile v. Porsboll*, 128 Nev. 27, 268 P.3d 1272 (2012).

As explained in the Opening Brief, this Court has held that a pre-decree agreement does not survive the entry of a divorce decree unless ***both*** the pre-decree agreement and the divorce decree direct the survival of the pre-decree agreement. *See, e.g.*, *Day*, 80 Nev. at 389-90, 395 P.2d at 322-23 (holding "survival provision of a [pre-decree] agreement is ineffective unless the court decree specifically directs survival.").

Here, the Divorce Decree contains an integration clause and does ***not*** direct the survival of the MOU. (1 JA 1, at 53 (providing that the Divorce Decree "contains the entire agreement of the parties on these matters, superseding any

previous agreement between them.").) Thus, as a matter of Nevada law, the MOU was merged into and superseded by the Divorce Decree. *See Day*, 80 Nev. at 389-90, 395 P.2d at 322-23; *accord Vaile*, 128 Nev. at 33 n.7, 268 P.3d at 1276 n.7 ("[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"). Because the MOU was merged into the Divorce Decree, David cannot use contract principles to collaterally attack the Divorce Decree by arguing Sarah breached the MOU. *See Vaile*, 128 Nev. 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.").

David cannot ignore controlling law by temporally isolating the MOU and asking this Court to ignore the parties' execution of the Divorce Decree. The parties' agreement in the MOU was merged into, and superseded by, the Divorce Decree. Thus, the MOU no longer exists and the Divorce Decree is the parties' one and only agreement. *See* Restatement (Second) of Contracts § 213(1) (1981) ("A binding integrated agreement discharges prior agreements to the extent that it is inconsistent with them.").

David's reliance on *Renshaw v. Renshaw*, 96 Nev. 541, 611 P.2d 1070 (1980) is misplaced. In *Renshaw*, this Court found that a breach of contract action was appropriate for a property agreement that was expressly *not* merged into a divorce decree. Here, unlike *Renshaw*, the MOU was expressly merged into the Divorce Decree. Indeed, this Court has rejected a similar attempt by a litigant to misuse its holding in *Renshaw*:

> The mother does not dispute that the child support order and its stipulated modifications, including its provision waiving the right to seek modification, ***were incorporated and merged into the decree***. This dispositively distinguishes *Renshaw* …, which was prosecuted "solely [as a] breach of contract action" and upheld a contract term for nonmodifiable support in a case in which the agreement was "neither incorporated in nor merged in the judgment and decree…."

See Fernandez v. Fernandez, 126 Nev. 28, 33 n.5, 222 P.3d 1031, 1035 n.5 (2010) (emphasis added) (alteration in original) (quoting *Renshaw*, 96 Nev. At 543, 611 P.2d at 1071). Moreover, this Court has called the viability of Renshaw into question. *See id.*

Further, David's citation of *Paine v. Paine*, 71 Nev. 262, 287 P.2d 716 (1955) does not help his cause. This Court's decision in *Paine* merely illustrates how an agreement may survive the entry of a divorce decree: the divorce decree directs it is not merged and survives. *Id.* at 263, 287 P.2d at 716. In *Paine*, the divorce decree unequivocally provided that the "agreement is not merged herein

but survives this decree and continues in full force and effect." *Id.* (internal quotation marks omitted). Thus, contractual principles applied given that the Divorce Decree directed the non-merger/survival of the agreement. *Id.* Here, unlike *Paine*, the Divorce Decree did not expressly direct the survival of the MOU—instead, it (the MOU) was expressly merged into the Divorce Decree.[8]

In sum, the district court lacks subject matter jurisdiction over David's breach of contract claim as his remedies are limited to those available to him on the Divorce Decree itself and jurisdiction over those remedies lies solely with the Family Court. *See id.*

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[8] Indeed, if Sarah and David wanted to incorporate the terms of the MOU in the Divorce Decree or direct its survival, 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. (1 JA 1, at 55-68.) 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 20.) Exhibit C to the Divorce Decree is a Mutual Behavior Order. (*Id.* at 73-78.) 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 20.) Exhibit B to the Divorce Decreed is the MOU. (*Id.* at 69-72.) Unlike the Stipulated Parenting Agreement and the Mutual Behavior Order, the terms of the MOU are <u>not</u> expressly incorporated by reference. (*Id.* at 20-21.) 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.

2. David's Claim is Barred by the Parol Evidence Rule.

David again asks this Court to ignore the Divorce Decree and consider the MOU in a vacuum to avoid the application of the parol evidence rule. (Ans. Br. at 14-16.) This argument fails.

As detailed in the Opening Brief, the Divorce Decree is the final integrated agreement between Sarah and David. The Divorce Decree contains an integration/merger clause, providing 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." (1 JA 1, at 53.) Even if one were to disregard the integration/merger clause, it is evident that the 39-page Divorce Decree, "in view of its completeness and specificity reasonably appears to be a complete agreement," and thus should be presumed to be an integrated agreement—especially considering that the three-page MOU failed to address numerous terms that were necessary to resolve the Divorce Matter. *See* Restatement (Second) of Contracts § 209(3). Indeed, the MOU itself contemplates that it does <u>not</u> represent the "final formal agreement" of the parties. (1 JA 1, at 11-12.) As such, David cannot use parol evidence (such as the MOU) to "vary or contradict [the Divorce Decree], since all prior negotiations and agreements are deemed to have been merged therein." *See Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (internal quotation marks omitted).

David's argument to avoid the application of the parol evidence rule boils down to this: his breach of contract claim was "perfected at the point of drafting, before the Decree was executed, and any supposed merger of the Agreements took place." (Ans. Br. at 15.) David even bizarrely argues, "[i]n a way, [his] claim has very little to do with the [Divorce] Decree." (*Id.*) In other words, David wants this Court to ignore reality and pretend the parties never signed the Divorce Decree when evaluating his breach of contract claim.

David's argument is nonsensical. The entire purpose of the parol evidence rule is to prevent parties from using merged agreements/negotiations to collaterally attack a fully integrated agreement. And that is exactly what David is attempting to do: collaterally attack the Divorce Decree with the MOU. David cannot avoid the parol evidence by asking this Court to temporally isolate his breach of contract claim to the point before the Divorce Decree was executed. He cannot ignore reality.

Moreover, David's arguments regarding the attachment of the MOU to the Divorce Decree are unpersuasive. (Ans. Br. at 15-16.) Simply because the MOU is attached to the Divorce Decree does not make the Divorce Decree ambiguous. While David disingenuously argues that the "MOU states that [Sarah] does not have an interest in" David's PERS pension in an effort to confect ambiguity, in reality, ***the MOU does <u>not</u> address the PERS pension <u>at all</u>***. (*Compare* Ans. Br. at

16 *with* 1 JA 1, at 12-14.) Again, this is because the MOU was not contemplated to be the final agreement of the parties—it only contained the material terms of their agreement. (1 JA 1, at 12-14.)

Regardless, parties to contracts often reference and/or attach prior agreements to their final integrated agreement. Indeed, given the integration clause of the Divorce Decree and that the MOU was attached, it is evident the parties intended for the Divorce Decree to supersede the MOU.[9]

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

3. David's Claim is Unripe.

David asserts that his breach of contract claim is ripe because, "[e]ven if the terms of the MOU are ultimately upheld, David has been damages [sic] by having to litigate the issue, pay additional fees and suffer through additional litigation that

[9] As detailed above, if the parties had intended to incorporate the terms of the MOU into the Divorce Decree, they would have done so expressly—just as they did with the other two exhibits to the Divorce Decree (the Stipulated Parenting Agreement and the Mutual Behavior Order). *See* § II.A at n.7, *supra*.

should have ended if Ms. Rose and her attorney had abided by the MOU." (Ans. Br. at 18.) This argument fails.

As explained in the Opening Brief, 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—and, in fact, he initially did (2 JA 15, at 337)—then the claims asserted in this matter will be moot because 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 ultimate result of the Divorce Action. *See Texas v. United States*, 523 U.S. 296, 300 (1998).

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 the Divorce Action, which continues to be litigated.

Further, the fact that David has incurred attorney's fees is not a cognizable form of damages. As the California Court of Appeals explained in *Navellier II*—a case relied upon by David—attorney's fees cannot constitute a cognizable form of damages for breach of an agreement where neither a statute nor the agreement provide for the recovery of attorney's fees. 131 Cal. Rptr. 2d at 211-12 ("Plaintiffs' major item of damages, the attorney's fees they incurred in connection with defendant's counterclaims, is not available as a matter of law because neither a statute nor the release provides for recovery of attorney's fees in this case.").

In sum, David's breach of contract claim is unripe because his purported damages are uncertain (and may not occur at all) depending on the outcome of the Divorce Action.

III. CONCLUSION

For the reasons set forth in the Opening Brief and above, David's breach of contract claim is subject to Nevada's anti-SLAPP statute and he failed to meet his burden of establishing a probability of prevailing.[10] Accordingly, this Court should

[10] David devotes nearly two pages of his Answering Brief to argue that he pled his breach of contract claim with specificity (presumably, the specificity required

vacate the portion of the district court's Order denying Sarah's Special Motion to Dismiss as to David's breach of contract claim and remand with instructions to the district court to grant the Special Motion to Dismiss in its entirety.

DATED this 8th day of November, 2021.

BAILEY❖KENNEDY

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by NRCP 8(a)) and made a prima facie showing of evidence (i.e. he attached the MOU and Divorce Decree to the Complaint). (Ans. Br. at 19-20.) David's contention is irrelevant. Sarah contends that David did not meet his burden to establish a probability of prevailing because his breach of contract claim ***fails as a matter of law***—i.e. even if the Court assumes the allegations of his Complaint to be true, David has failed to assert a viable claim for relief against Sarah.

NRAP 32(a)(9) CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Reply Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type-style requirements of NRAP 32(a)(6) because this Reply Brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in Times New Roman font 14.

2. I further certify that this Reply Brief complies with the type-volume limitations of NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and contains 4,608 words.

3. I further hereby certify that I have read this Reply Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. I further certify that this Reply Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the Reply Brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying Opening Brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 8th day of November, 2021.

BAILEY❖KENNEDY

By: /s/ Paul C. Williams
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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 8th day of November, 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:

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