

**KAINEN LAW GROUP, PLLC**  
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www.KainenLawGroup.com

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

SARAH JANEEN ROSE,  
Appellant,  
vs.  
DAVID JOHN ROSE,  
Respondent.

Electronically Filed  
Jul 13 2022 05:26 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
CASE NO. 84295  
District Court Case No:  
D547250

**JOINT APPENDIX**

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Volume II - (Bates Stamps APPX0251 - APPX0471)  
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Volume VIII - (Bates Stamps APPX01392 - APPX01599)  
Volume IX - (Bates Stamps APPX01600 - APPX01842)  
Volume X - (Bates Stamps APPX01843 - APPX01921)

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ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

**LIST OF APPENDIX DOCUMENTS**

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Appendix of Exhibits In Support of Plaintiff's Motion to Set Aside The Paragraph Regarding Survivor Benefits in the Decree of Divorce Based Upon Mistake	04.25.18	Vol. I	APPX0198- APPX0200
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AFFIRMATION

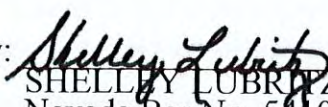
(Pursuant to NRS 239B.030)


The undersigned does hereby affirm that the preceding documents filed in the above-referenced matter does not contain the social security number of any person.

DATED this 13 day of July, 2022.

Law Office of Shelley Lubritz,  
PLLC

Kainen Law Group, PLLC

By:   
SHELLEY LUBRITZ, ESQ.  
Nevada Bar No. 5410  
Attorney for Respondent

By:   
RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
Attorney for Appellant

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13<sup>th</sup> day of July, 2022, I caused to be served the *Joint Appendix* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:


\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

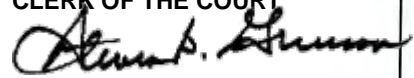
\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

shelley@lubritzlawoffice.com

daverose08@gmail.com

  
An Employee of  
KAINEN LAW GROUP, PLLC



1 **APPX**  
2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
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10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant  
13 *in conjunction with the Legal Aid Center of Southern Nevada*

8 DISTRICT COURT  
9  
10 CLARK COUNTY, NEVADA

11 DAVID ROSE,  
12  
13 Plaintiff,  
14  
15 vs.  
16 SARAH ROSE,  
17 Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing: July 13, 2020  
Time of Hearing: 9:00 a.m.

18 **APPENDIX TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION**  
19 **TO AMEND OR ADD ADDITIONAL FINDINGS PURSUANT TO NRCP 52,**  
20 **OR ALTERNATIVELY, MOTION FOR RELIEF PURSUANT TO NRCP**  
21 **60(b)(6) AND**  
22 **COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS**

23 COMES NOW, Defendant, SARAH ROSE (hereinafter "Wife"), by and  
24 through her attorney, RACHEAL H. MASTEL, ESQ., of the law firm of KAINEN LAW  
25 GROUP, PLLC, and hereby submits her Appendix to Opposition to *Plaintiff's Motion to*  
26 *Amend or Add Additional Findings Pursuant to NRCP 52, or Alternatively, Motion for*  
27 *Relief Pursuant to NRCP 60(b)(6)*, and requests this Court award her Attorney's Fees and  
28 Costs.

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...

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www.KainenLawGroup.com

APPX0472



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Title of Document(Description)	Exhibit No.	Bates Stamp
Order of Reversal and Remand in Peterson v. Peterson, issued May 22, 2020	A	DEF0034 - DEF0038
Complaint for Civil case A-20-815750-C, filed May 29, 2020	B	DEF0039 - DEF0127

DATED this 5 day of June, 2020.

KAINEN LAW GROUP, PLLC

By: 

RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18<sup>TH</sup> day of June, 2020, I caused to be served the *Appendix to Opposition to Defendant's Opposition to Plaintiff's Motion to Amend or Add Additional Findings Pursuant to NRCP52, or Alternatively, Motion for Relief Pursuant to NRCP 60(b)(6) and Countermotion for Attorney's Fees and Costs* to all interested parties as follows:

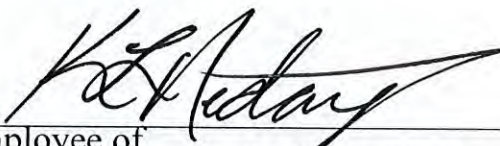
\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Shelley@lubritzlawoffice.com

  
An Employee of  
KAINEN LAW GROUP, PLLC



## **EXHIBIT “A”**

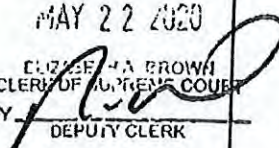
IN THE SUPREME COURT OF THE STATE OF NEVADA

LOUISA M. PETERSON,  
Appellant,  
vs.  
JAMES A. PETERSON,  
Respondent.

No. 77478

FILED

MAY 22 2020

CLAUDE H. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court post-divorce-decree order denying a motion to divide omitted assets. Eighth Judicial District Court, Family Court Division, Clark County; Sandra L. Pomrenze and Bryce C. Duckworth, Judges.

Appellant Louisa Peterson and respondent James Peterson divorced in 2017. The decree divided James's military retirement benefits but did not expressly address his Thrift Savings Plan (TSP) or Survivor Benefit Plan (SBP). Louisa sought division of the TSP and SBP under NRS 125.150(3), which allows a party to move for the adjudication of community property mistakenly or fraudulently omitted from the divorce decree within three years of discovering the mistake or fraud. The district court denied her motion and this appeal followed.

Addressing the TSP, the district court found that James had not contributed any marital funds to the account and thus refused to adjudicate it as omitted community property under NRS 125.150(3). But the record does not contain substantial evidence to support this finding.<sup>1</sup>

<sup>1</sup>The district court relied on "counsel's representations" that James did not contribute any marital funds to the account, but "[a]rguments of counsel are not evidence and do not establish the facts of the case." *Nev. Ass'n Servs., Inc. v. Eighth Judicial Dist. Court*, 130 Nev. 949, 957, 338 P.3d

20-19557

DEF0034  
APPX0476



James conceded as much when he agreed to a limited remand on this issue in his appellate brief and during oral argument. We therefore reverse the district court's order as it pertains to the TSP and remand for further proceedings. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (explaining that we may set aside factual findings that lack the support of substantial evidence). On remand, James must produce evidence that he did not contribute marital funds into the TSP and the district court must render its decision based on the evidence.

Addressing the SBP, the district court found that it was "simply a right under" the military pension that the parties failed to exercise. The court therefore concluded that it was not an omitted asset under NRS 125.150(3). We review the district court's interpretation of the divorce decree and its conclusion that the SBP was not an omitted asset de novo. *See Henson v. Henson*, 130 Nev. 814, 818, 334 P.3d 933, 936 (2014) ("Because a district court's interpretation of a divorce decree presents a question of law, this court reviews such an interpretation de novo."); *see also Kilgore v. Kilgore*, 135 Nev. 357, 359-60, 449 P.3d 843, 846 (2019) (reciting the well-established rule that this court reviews factual findings deferentially, but conclusions of law de novo).

---

1250, 1255 (2014) (internal quotation and alteration omitted). Further, the pay stubs James *did* offer as evidence show only that there was a three-month period in 2016 during which he did not contribute funds to the TSP, which is insufficient to support that he did not fund the TSP for the entire marriage.



To warrant adjudication under NRS 125.150(3), the SBP must be (1) community property and (2) omitted by mistake or fraud.<sup>2</sup> We have repeatedly held that benefits earned during marriage are community property even when the member spouse receives the benefit only after the marriage. *Id.* at 366, 449 P.3d at 850 (holding that "vacation and sick pay earned and accrued during a marriage are community property and subject to equal division"); *Walsh v. Walsh*, 103 Nev. 287, 288, 738 P.2d 117, 117 (1987) (holding that "retirement benefits earned during the marriage are community property"). Because James admitted both in the district court briefing and at oral argument that the SBP was a community property asset that was "inadvertently omitted" from the divorce decree, we conclude that under these particular facts, his admission is sufficient to establish that the SBP was omitted by mistake under NRS 125.150(3).<sup>3</sup>

We therefore reverse the district court's order as it pertains to the SBP and remand for the district court to adjudicate the SBP under NRS 125.150(3). On remand, the district court must comply with NRS 125.150(3)'s mandate to "equally divide the omitted community property," unless it finds "a compelling reason" not to, which it must set forth in writing. However, the district court is not *required* to order James to select an SBP and designate Louisa as the sole beneficiary. It might instead

---

<sup>2</sup>NRS 125.150(3) also requires that the party move for adjudication within three years of discovering the mistake or fraud, which Louisa undisputedly did.

<sup>3</sup>Because of James's concession, we need not make a legal determination on appeal of whether the SBP here is a community property asset or a mere "right" to be exercised under the military pension.



exercise its broad discretion to deny the requested relief or provide an alternative form of equitable relief.

Accordingly, we ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Pickering, C.J.  
Pickering

Gibbons, J.  
Gibbons

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

Stiglich, J.  
Stiglich

Cadish, J.  
Cadish

Silver, J.  
Silver

cc: Hon. Bryce C. Duckworth, District Judge, Family Court Division  
Hon. Sandra L. Pomrenze, District Judge, Family Court Division  
James J. Jimmerson, Settlement Judge  
Willick Law Group  
James E. Smith  
Eighth District Court Clerk



## **EXHIBIT “B”**



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

**FILE COPY**  
JUN 8 2020

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

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

DAVID JOHN ROSE, an individual,  
Plaintiff,

Case No.:

vs.

Dept. No.:

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

**COMPLAINT**

Defendants

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

COMPLAINT - 1



I.

INTRODUCTION

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

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

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

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

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

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

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

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

II.

FACTUAL BACKGROUND

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

28 Defendant MCCONNELL went on to write,



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

9 \* \* \*

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

### 13 III.

#### 14 FIRST CLAIM FOR RELIEF

##### 15 (negligence)

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

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

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

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

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

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

COMPLAINT - 5

DEF004B

APPX0486



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

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

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

## IV.

## SECOND CLAIM FOR RELIEF

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

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

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

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

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

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

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

///

///

V.

**THIRD CLAIM OF RELIEF**

**(breach of contract)**

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

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

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

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

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

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

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**VI.**

**FOURTH CLAIM OF RELIEF**

**(Civil Conspiracy)**

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

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

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

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

**VII.**

**FIFTH CLAIM OF RELIEF**

**(breach of contract)**

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

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

1           46. Defendant breached the contract in several respects, including, but not limited to:  
2           a. Drafting the Decree of Divorce, which contained terms that SARAH  
3 would be entitled to survivorship benefits under Plaintiff's PERS account;  
4  
5           b. Submitting the Decree of Divorce so that its terms become legally  
6 enforceable;  
7  
8           c. Seeking to enforce the survivorship benefit from the Decree, despite being  
9 contradictory to the agreed upon terms of the MOU.

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

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

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

- 16  
17           1. All consequential and incidental damages incurred by Plaintiff;  
18           2. Past and future general damages in excess of \$10,000.00;  
19           3. Past and future special damages in excess of \$10,000.00;  
20           4. Reasonable attorney fees;  
21           5. Costs associated with prosecuting the matter; and  
22           6. For such other relief as this Court deems proper.  
23

24 ///

25 ///

26 ///



1 Dated this 13th day of May, 2020.

2 COHEN|JOHNSON|PARKER|EDWARDS

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

6 JAMES L. EDWARDS, ESQ.

7 State Bar No. 4256

8 ADAM C. EDWARDS, ESQ.

9 State Bar No.: 15405

10 375 E. Warm Springs Rd., Suite 104

11 Las Vegas, NV 89119

12 *Attorneys for Plaintiffs*

13  
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28 COMPLAINT - 10

DEF0048

APPX0491

# Exhibit 1

DEF0049

APPX0492



## 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

Approved as to Form and Content:

REGINA M. McCONNELL, ESQ.  
REGINA M. McConnell, ESQ.  
Counsel for David Rose

SARAH ROSE

Dated: 03/23/2018

SHELLY BOOTH COOLEY, ESQ.  
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

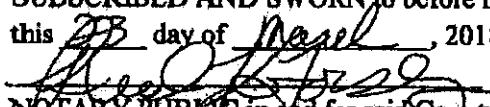
NOTARY PUBLIC in and for said County and State

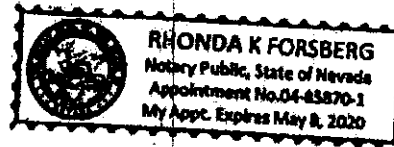




SARAH ROSE did appear before me on the date set forth below, provided appropriate identification, and did sign the foregoing Marital Settlement Agreement as acknowledgement and agreement with its terms.

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

  
NOTARY PUBLIC in and for said County and State



# Exhibit 2

DEF0053

APPX0496



*Steven D. Griesen*

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  
☐ Deposed After Trial Start  
Settled/Withdrawn:  
☒ Without Judicial Cost/Htg  
☐ With Judicial Cost/Htg  
☐ By ADR  
Trial Dispositions:  
☐ Judgment Reached by Trial  
☐ Judgment Reached by Verdict

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

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



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

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

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

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

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



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

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

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

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

23 The Court FINDS that the parties' have resolved all other issues,  
24 including, but not limited to, child support, division of assets and debts,  
25  
26  
27  
28



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

4  
5 **A. Child Custody**

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

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

23 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED  
24 AND DECREED that the family dog, Abby, shall travel with the children  
25 between homes, once SARAH JANEEN ROSE has her own residence. If  
26  
27  
28 . . .

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

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

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

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

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

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

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

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

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



1  
2 B. Pursuant to NRS 125C.006, the parties, and each of them, are  
3  
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  
5 relocating parent shall, before relocating:

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

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

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

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

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

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

21 D. Pursuant to chapters 125A of NRS and NRS 125C.0601 to  
22 125C.0693, the parties, and each of them, are hereby placed on notice of  
23 the following:

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



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

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

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



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

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

12 These provisions shall continue until such time as the child attains  
13 the age of eighteen (18) years, unless the child is still attending high  
14 school, and in such event until said child graduates from high school or  
15 attains the age of nineteen (19), or until such child is otherwise  
16 emancipated pursuant to the Nevada Revised Statutes, whichever occurs  
17 first.  
18  
19  
20

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



- 1 a. Documentation of Out-of-Pocket Expenses  
2 Required: A party who incurs an out-of-pocket  
3 expense for medical care is required to document  
4 that expense and proof of payment of that expense.  
5 A receipt from the health care provider is sufficient  
6 to prove the expense so long as it has the name of  
7 the child on it and shows an actual payment by the  
8 party.
- 9 b. Proof of Payment Required: A party who has paid  
10 a health expense for the minor child of the parties  
11 must provide a copy of the proof of payment to the  
12 other party and the insurance company within  
13 thirty (30) days of the payment being made and in  
14 no event later than the expense could have been  
15 submitted to insurance for reimbursement. The  
16 failure of a party to comply with this provision in a  
17 timely manner which causes the claim for  
18 insurance reimbursement to be denied by the  
19 insurance company as untimely will result in that  
20 party being required to pay the entire amount  
21 which would have been paid by the insurance  
22 company as well as one-half (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 d. Sharing of Insurance Information Required: The  
9 party providing insurance coverage for the child  
10 has a continuing obligation to provide insurance  
11 information including, but not limited to, copies of  
12 policies and changes thereto as they are received,  
13 claim forms, preferred provider lists (as modified  
14 from time to time), and identification card. The  
15 failure of the insuring party to timely supply any of  
16 the above items to the other party which results in  
17 the claim for treatment being denied by the  
18 insurance company in whole or in part will result  
19 in the amount which would have been paid by the  
20 insurance policy being paid by the insuring party.

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



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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

- 9  
10                   (a) The names, dates of birth, social security numbers  
11                   and driver's license numbers of the parents of the child;  
12                   (b) The name and social security number of the child;  
13                   (c) The case identification number assigned by the court; and  
14                   (d) Such other information as the welfare department  
15                   determines is necessary to carry out the provisions of 42  
16                   U.S.C. Section 654a.

17  
18 C. Community Property:

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

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

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



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

7  
8 b) One-half of the community portion, as defined within  
9 Nevada law as articulated in Gemma v. Gemma, 105 Nev. 458  
10 (1989), and Fondi v. Fondi, 106 Nev. 856 (1990), in DAVID  
11 JOHN ROSE's Las Vegas Metropolitan Police Department  
12 Public Employees' Retirement System of Nevada Pension  
13 benefits, said pension benefits to be divided pursuant to a  
14 Qualified Domestic Relations Order ("QDRO"), based upon a  
15 selection of Option 2 being made at the time of retirement so  
16 as to name SARAH JANEEN ROSE as the irrevocable  
17 survivor beneficiary of DAVID JOHN ROSE' pension benefits  
18 upon death, to divide said retirement account. The parties  
19 shall engage the services of Shann D. Winesett, of Las Vegas  
20 QDRO, located at 8925 South Pecos Road, Suite 14C,  
21 Henderson, Nevada 89074, Telephone: (702) 263-8438, E-Mail:  
22 customerservice@lasvegasqdro.com, for the preparation of the  
23  
24  
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1 QDRO immediately after both parties and their respective  
2 counsel duly execute the Stipulated Decree of Divorce. SARAH  
3 JANEEN ROSE and DAVID JOHN ROSE shall equally bear  
4 the cost associated with preparing said QDRO (approximately  
5 \$800.00). Both parties are authorized to communicate with the  
6 preparer of the QDRO with regard to preparation of the  
7 QDRO. Both parties understand that The Cooley Law Firm  
8 and McConnell Law Group, Ltd. are not responsible for the  
9 preparation of the QDRO.  
10

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

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

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

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



1 h) All of his personalties.

2 2. Awarded to Defendant, SARAH JANEEN ROSE:

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

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

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



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

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 personalities.

12 **D. Community Debt:**

13  
14 **1. To be Paid by Plaintiff, DAVID JOHN ROSE:**

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

20  
21 a) Any and all debts associated with the assets awarded to  
22 him herein.

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

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

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

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

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

- 8           a)   Any and all debts associated with the assets awarded to  
9               her.  
10  
11          b)   Any and all debts in her name alone.  
12  
13          c)   Any and all credit cards in her name alone.  
14  
15          d)   Any and all debts incurred solely by SARAH JANEEN  
16          ROSE as of the parties separation, which occurred on  
17          02/21/2017.

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

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

19 **F. Attorneys' Fees:**

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

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

26 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED  
27  
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  
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1 **I. PROPERTY ACQUIRED IN FUTURE TO BE SEPARATE**  
2 **PROPERTY**

3 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED,  
4  
5 AND DECREED that except as otherwise specified herein, any and all  
6 property acquired, income received or liabilities incurred by either of the  
7 parties hereto, shall be the sole and separate property of the one so  
8 acquiring the same, or the sole liability of the one so incurring the same.  
9  
10 Each of the parties hereto respectively grants to the other all such future  
11 acquisitions of property as the sole and separate property of the one so  
12 acquiring the same and holds harmless and agrees to indemnify the other  
13 party from any and all liabilities incurred.  
14

15  
16 **J. RIGHT TO DISPOSE OF PROPERTY BY WILL**

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

17  
18 **N. ACCEPTANCE OF DECREE AND ADVICE OF COUNSEL**

19 IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED  
20 AND DECREED that DAVID JOHN ROSE and SARAH JANEEN ROSE  
21 agree that they each have had a reasonable opportunity to seek the advice  
22  
23  
24  
25  
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1 of independent counsel and to obtain adequate and sufficient knowledge  
2 of the extent and approximate present value of the community property  
3 and separate property of the other, and to the extent of having declined  
4 to examine and/or investigate further, have thereby waived and do hereby  
5 waive and relinquish the right to do so.  
6

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



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

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

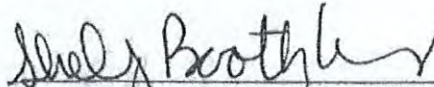
4 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

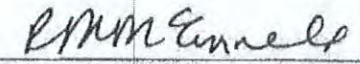
5   
6  
7 SARAH JANEEN ROSE

  
8 DAVID JOHN ROSE

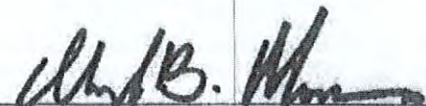
9 THE COOLEY LAW FIRM

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  
26  
27  
28  
IT IS SO ORDERED this \_\_\_\_\_ day of APR 09 2018, 2018.

  
DISTRICT COURT JUDGE

@

# Exhibit “A”

DEF0093

APPX0536



*Steven D. Grierson*

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

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

9 DAVID ROSE,

10 Plaintiff,

11 vs.

12 SARAH ROSE,

13 Defendant.

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

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
<u>Martin Luther King, Jr.'s Birthday:</u> 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
<u>Presidents' Day:</u> 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
<u>Easter Sunday:</u> 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
<u>Mother's Day:</u> 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
<u>Memorial Day:</u> This holiday shall be defined as the last Monday in May and shall begin at 3:00 p.m.	Mother	Father



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

Mother

Father

11 Second Period/New Year's Day (January 1<sup>st</sup>)

Father

Mother

12 Children's Birthdays: The children's birthdays  
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.

Mother

Father

16 Parents' Birthdays: 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 Vacations: 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.

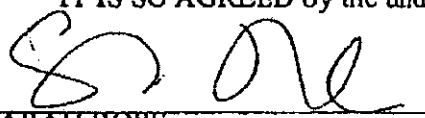
25 IT IS STIPULATED and THEREFORE ORDERED, ADJUDGED AND  
26 DECREED that, by and between the parties hereto, that the above and foregoing  
27 STIPULATED PARENTING AGREEMENT is acceptable to the parents, is fair, is  
28 in the children's best interest; and the parents respectfully request the Court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

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



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

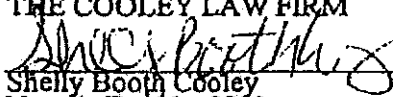
4 IT IS SO AGREED by the undersigned this \_\_\_\_\_ day of July, 2017.

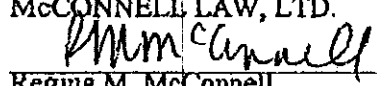
5  
6   
7 SARAH ROSE  
Defendant

8   
9 DAVID ROSE  
Plaintiff

10 THE COOLEY LAW FIRM

11 McCONNELL LAW, LTD.

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

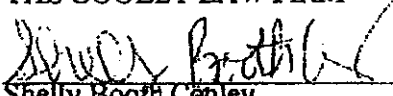
19   
20 Regina M. McConnell  
21 Nevada Bar No. 8029  
22 9017 S. Pecos Road, Suite 4445  
23 Henderson, Nevada 89074  
24 Attorneys for Plaintiff,  
25 DAVID ROSE

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

28   
District Court Judge

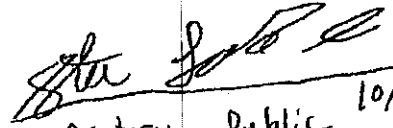
Respectfully Submitted:

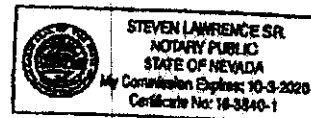
THE COOLEY LAW FIRM

29   
30 Shelly Booth Cooley  
31 Nevada Bar No. 8992  
32 10161 Park Run Drive, Suite 150  
33 Las Vegas, Nevada 89145  
34 Attorneys for Defendant,  
35 SARAH ROSE

State of Nevada  
County of Clark

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

36   
37 Notary Public 10/11/17



# Exhibit “B”

DEF0107

APPX0550



## 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

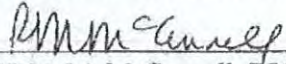
  
DAVID ROSE

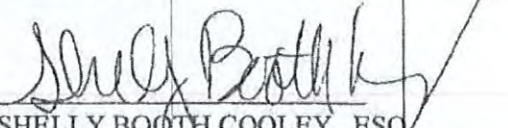
Dated: 3-23-18

  
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

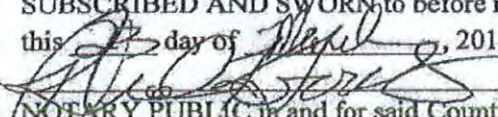
STATE OF NEVADA )

) 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

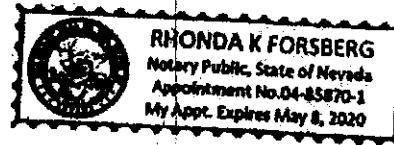




SARAH ROSE did appear before me on the date set forth below, provided appropriate identification, and did sign the foregoing Marital Settlement Agreement as acknowledgement and agreement with its terms.

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

  
NOTARY PUBLIC in and for said County and State



# Exhibit “C”

DEF0111

APPX0554



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

\_\_\_\_\_  
Plaintiff,  
vs.

Case No: \_\_\_\_\_  
Dept No: I

\_\_\_\_\_  
Defendant.

**BEHAVIOR ORDER**

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

1. No abusive contact (foul language, name calling, etc.) including telephone calls, voicemails, letters, email, texts, all forms of social media, etc., to the other party or to the child(ren).
2. Avoid any unnecessary contact with the other party's "significant other" and friends not in common with you and do not initiate conflicts with them.
3. No unnecessary contact with other people associated with or to the other party for purposes of discussing court proceedings or making negative/disparaging allegations against the other party (this includes all forms of social media).

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

9 5. No harassment at the other party's place(s) of employment, including  
10 contacting the employer to make negative or disparaging allegations; or to send  
11 or drop off evidence as it relates to these court proceedings that appears  
12 reasonably designed to put them, or likely to put them in a bad light or to get  
13 them fired, or to have them suffer negative consequences as a result.  
14  
15

16 6. No providing copies of unsolicited documents (personal letters, court  
17 pleadings, emails, texts, etc.) to anyone associated with a party (significant  
18 others, family members, neighbors, employers, etc.) for the intended purpose of  
19 shedding the other party in a negative light.  
20

21 7. Neither party shall post, nor shall you allow significant others or family  
22 members on social media to post, including, but not limited to, FaceBook,  
23 Twitter, YouTube, Instagram, LinkedIn, Tumblr, and Google+, any negative or  
24 disparaging allegation against or negative image of the other party or anyone  
25 associated with the other party.  
26  
27  
28



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

8  
9 9. Neither party shall interrogate the child(ren) as to the activities or  
10 events at the other parent's residence, etc., and shall try to respect and not  
11 interfere with the child(ren)'s privacy and relationship with the other parent; do  
12 not place your child(ren) in a loyalty bind between yourself and the other parent;  
13 your child(ren) need to be able to love both of you freely in both of your homes  
14 for healthy child development.  
15

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

1 11. Neither party shall threaten to commit or actually commit an act of  
2 violence upon the other party, upon the child(ren) in common of the parties, upon  
3 child(ren) not in common of a party, or upon the significant other, friend,  
4 relative, employer, employee, neighbor, etc. of a party.  
5

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

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

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

22 15. There shall be no invasion of the electronic devices, email accounts,  
23 social media accounts, separate bank accounts, safe deposit boxes, separate  
24 residences or separate vehicles, etc. of the other party.  
25  
26  
27  
28



1 16. Except as modified herein, all other court orders remain in full force  
2 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  
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26  
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# Exhibit 3

DEF0117

APPX0560





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.

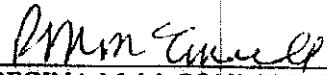
///

///

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>th</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).

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

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 *Kortel v Kortel*, 101 Nev. 140, 696 P.2d 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

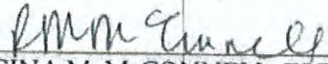
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III. CONCLUSION

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

DATED this 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.

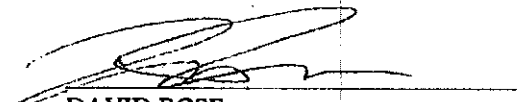
2. That I have read the above and foregoing Motion and know the contents thereof and that the same is true of my own knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

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 pmcneel

DEF0127

APPX0570

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Divorce - Complaint****COURT MINUTES**

June 26, 2020

D-17-547250-D      David Rose, Plaintiff  
vs.  
Sarah Rose, Defendant.

**June 26, 2020      3:30 PM      Minute Order**

**HEARD BY:** Moss, Cheryl B.**COURTROOM:** Chambers**COURT CLERK:** Kendall Williams**PARTIES:**

Carson Rose, Subject Minor, not present  
David Rose, Plaintiff, Counter Defendant, not present      Shelley Lubritz, Attorney, not present  
David Rose, Subject Minor, not present  
Lily Rose, Subject Minor, not present  
Sarah Rose, Defendant, Counter Claimant, not present      Racheal Mastel, Attorney, not present

<b>JOURNAL ENTRIES</b>
------------------------

MINUTE ORDER - NO HEARING HELD AND NO APPEARANCES

NRCP 1 and EDCR 1.10 state that the procedures in district court shall be administered to secure efficient, just, and inexpensive determinations in every action and proceeding.

Pursuant to EDCR 5.206, a party filing a motion is required to serve the opposing party with a copy of all papers filed within 3 calendar days of submission for filing.

Pursuant to Rule 2.26, if a motion to shorten time is granted, it must be served upon all parties promptly; in no event may the notice of the hearing of a motion be shortened to less than 1 full judicial day.

PRINT DATE:	06/26/2020	Page 1 of 2	Minutes Date:	June 26, 2020
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**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

APPX0571



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

SARAH JANEEN ROSE,

Appellant,

vs.

DAVID JOHN ROSE,

Respondent.

CASE NO. 84295

District Court Case No:  
D547250

**JOINT APPENDIX**

Volume I - (Bates Stamps APPX0001 - APPX0250)  
Volume II - (Bates Stamps APPX0251 - APPX0471)  
Volume III - (Bates Stamps APPX0472 - APPX0670)  
Volume IV - (Bates Stamps APPX0671 - APPX0767)  
Volume V - (Bates Stamps APPX0768 - APPX0941)  
Volume VI - (Bates Stamps APPX0942 - APPX01176)  
Volume VII - (Bates Stamps APPX01177 - APPX01391)  
Volume VIII - (Bates Stamps APPX01392 - APPX01599)  
Volume IX - (Bates Stamps APPX01600 - APPX01842)  
Volume X - (Bates Stamps APPX01843 - APPX01921)

RACHEAL H. MASTEL, ESQ.

Nevada Bar No. 11646

Kainen Law Group, PLLC

3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

Tel: (702) 823-4900

Fax: (702) 823-4488

Email: [service@kainenlawgroup.com](mailto:service@kainenlawgroup.com)

SHELLEY LUBRITZ, ESQ.

Nevada Bar No. 5410

Law Office Of Shelly Lubritz, PLLC

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ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

**LIST OF APPENDIX DOCUMENTS**

<u>Title of Document</u>	<u>Filing Date</u>	<u>Volume</u>	<u>Bates Stamp</u>
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Affidavit of Resident Witness	03.23.18	Vol. I	APPX0118- APPX0119
Amended Citation Correction to Plaintiff's Reply to Defendant's Opposition to Motion to Enforce Memo- randum of Understanding and For Attorney's Fees and Costs	6.13.19	Vol. II	APPX0344- APPX0346
Amended Order Setting Evidentiary Hearing	4.10.20	Vol. II	APPX0441- APPX0442
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Appendix of Exhibits In Support of Plaintiff's Motion to Set Aside The Paragraph Regarding Survivor Benefits in the Decree of Divorce Based Upon Mistake	04.25.18	Vol. I	APPX0198- APPX0200
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1	Appendix of Exhibits to Defendant's Motion For Judgment Pursuant to NRCP 52( c ) Or In The Alternative For Summary Judgment	2.12.20	Vol. IV	APPX0671-APPX0767
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9	Certificate of Service	02.8.22	Vol. VIII	APPX1595-APPX1596
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5	Behalf of Shelly			
6	Booth Cooley, Esq.			
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11	52(c) or in the Alternative			
12	For Summary Judgment			
13	and Countermotion for			
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8	Regina McConnell, Esq.			
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AFFIRMATION

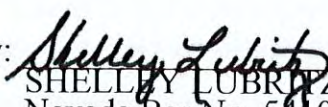
(Pursuant to NRS 239B.030)


The undersigned does hereby affirm that the preceding documents filed in the above-referenced matter does not contain the social security number of any person.

DATED this 13 day of July, 2022.

Law Office of Shelley Lubritz,  
PLLC

Kainen Law Group, PLLC

By:   
SHELLEY LUBRITZ, ESQ.  
Nevada Bar No. 5410  
Attorney for Respondent

By:   
RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
Attorney for Appellant

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13<sup>th</sup> day of July, 2022, I caused to be served the *Joint Appendix* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:


\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

shelley@lubritzlawoffice.com

daverose08@gmail.com

  
An Employee of  
KAINEN LAW GROUP, PLLC



On June 03, 2020 Plaintiff/Father represented by Shelley Lubritz, Esq. filed a Motion to Amend or Add Additional Findings Pursuant to NRCP 52 or Alternatively, Motion for Relief Pursuant to 60(b).

On June 04, 2020 a Notice of Hearing was issued by the Clerk of Court setting the matter for hearing on July 13, 2020 at 9:00AM. The notice of hearing was electronically served.

On June 11, 2020 Father filed an Ex Parte Application and Declaration in Support of Request for an Order Shortening Time (OST).

On June 16, 2020 the OST was granted and filed by Father.

On June 18, 2020 Defendant/Mother represented by Rachel Mastel, Esq. filed an Opposition and Countermotion for Attorney's Fees and Costs with a hearing date and time of July 13, 2020 at 9:00AM.

The COURT FINDS that Father failed to timely serve the granted OST upon Mother's counsel pursuant to Rule 2.26.

IT IS ORDERED that the hearing set on June 29, 2020 at 10:00AM is VACATED.

IT IS FURTHER ORDERED that the above motion and opposition SHALL be heard on JULY 13, 2020 at 9:00AM

A copy of this minute order shall be served electronically.

SO ORDERED.

CLERK'S NOTE: A copy of this minute order shall be emailed to the parties/counsel. (kw 6/26/2020)

PRINT DATE:	06/26/2020	Page 2 of 2	Minutes Date:	June 26, 2020
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## Divorce - Complaint

## COURT MINUTES

August 06, 2020

D-17-547250-D      David Rose, Plaintiff  
vs.  
Sarah Rose, Defendant.

August 06, 2020      01:30 PM      Status Check

HEARD BY:      Moss, Cheryl B.      COURTROOM: Courtroom 13

COURT CLERK:      Madrigal, Blanca

## PARTIES PRESENT:

David Rose, Counter Defendant, Plaintiff, Not Present      Shelley Lubritz, Attorney, Present

Sarah Rose, Counter Claimant, Defendant, Not Present      Racheal H. Mastel, ESQ, Attorney, Present

David Rose, Subject Minor, Not Present

Carson Rose, Subject Minor, Not Present

Lily Rose, Subject Minor, Not Present

## JOURNAL ENTRIES

## STATUS CHECK: TRIAL DATE

In the interest of public safety due to the Coronavirus pandemic, all parties were present via VIDEO CONFERENCE through the Bluejeans application.

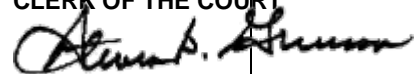
Ms. Lubritz had no objection to hold trial via Bluejeans on 8/13/2020, as the case has been pending for a long time, that Judge Moss has been on the case since the beginning, and only one day left to finish trial.

Ms. Mastel objected and requested an in-person trial. Ms. Mastel had concerns with calls dropping, internet issues, inability to see everything, internet interferences, and concerns with appellate record.

COURT ORDERED, the Court shall confer with the Chief Judge to decide if the trial should proceed via Bluejeans. Ms. Lubritz may file a Motion to move forward via Bluejeans and Ms. Mastel may file an Opposition. The Trial Date of 8/13/2020 shall be VACATED pending further orders.

## INTERIM CONDITIONS:

## FUTURE HEARINGS:



**EXPT**

Shelley Lubritz, Esq.  
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LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
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Las Vegas, Nevada 89119  
Telephone: (702) 833-1300  
Facsimile: (702) 442-9400  
E-mail: shelley@lubritzlawoffice.com  
*Attorney for Plaintiff*  
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

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

Hearing Date:  
Hearing Time:


**NO ORAL ARGUMENT REQUESTED**

**PLAINTIFF'S EX PARTE REQUEST TO SEAL FILE**

COMES NOW, Plaintiff, DAVID JOHN ROSE, by and through his attorney, Shelley Lubritz, Esq. of the Law Office of Shelley Lubritz, Esq. and requests the Court to order the file in this matter be sealed pursuant to NRS 125.110.

Dated this 13<sup>th</sup> day of August, 2020.

LAW OFFICE OF SHELLEY LUBRITZ, PLLC

By:   
Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff



**ORDR**

Shelley Lubritz, Esq.  
Nevada Bar No. 005410  
LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 833-1300  
Facsimile: (702) 442-9400  
E-mail: [shelley@lubritzlawoffice.com](mailto:shelley@lubritzlawoffice.com)

*Attorney for Plaintiff*  
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

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

Hearing Date:  
Hearing Time:

**ORDER SEALING FILE**

The Court being fully advised in the premises, pursuant to *Plaintiff's Ex Parte Request to Seal File*, and good cause appearing,

...

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...

**IT IS HEREBY ORDERED** that the file in the above matter, pursuant to NRS 125.110, be sealed.

Dated this \_\_\_\_\_ day of August, 2020. **Dated this 26th day of August, 2020**

Ch. B. M.  
DISTRICT COURT JUDGE      AF

Respectfully submitted:

DCB 412 9F2E A193  
Cheryl B. Moss  
District Court Judge

LAW OFFICE OF SHELLEY LUBRITZ, PLLC

By: Shelley Lubritz  
Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff

1 **CSERV**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 David Rose, Plaintiff

CASE NO: D-17-547250-D

7 vs.

DEPT. NO. Department I

8 Sarah Rose, Defendant.  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/26/2020

15 "Regina M. McConnell, Esq." .

Regina@MLVegas.com

16 Shelly Booth Cooley .

scooley@cooleylawlv.com

17 Kimberly Glad

kglad@lipsonneilson.com

18 Susana Nutt

snutt@lipsonneilson.com

19 Debra Marquez

dmarquez@lipsonneilson.com

20 Julie Funai

jfunai@lipsonneilson.com

21 Racheal Mastel

Service@KainenLawGroup.com

22 David Rose

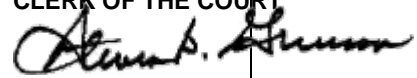
daverose08@gmail.com

23 Shelley Lubritz

shelley@lubritzlawoffice.com

24  
25  
26  
27  
28 APPX0577





**NEOJ**

Shelley Lubritz, Esq.  
Nevada Bar No. 005410  
LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 833-1300  
Facsimile: (702) 442-9400  
E-mail: [shelley@lubritzlawoffice.com](mailto:shelley@lubritzlawoffice.com)

*Attorney for Plaintiff*  
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

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

Hearing Date:  
Hearing Time:

**NOTICE OF ENTRY OF ORDER SEALING FILE**

TO: SARAH JANEEN ROSE, Defendant and

TO: RACHEAL MASTEL, ESQ., her attorney:

...

...

...

...

...

...

1 Please take notice that on August 26, 2020, an Order Sealing File was filed in the  
2 above-entitled matter, a copy of which is attached hereto.

3 Dated this 26<sup>th</sup> day of August, 2020.

4  
5 LEGAL SERVICES ONE, LLC

6 By: Shelley Lubritz  
7 Shelley Lubritz, Esq.  
8 Nevada Bar No. 5410  
9 375 E. Warm Springs Road Suite 104  
10 Las Vegas, Nevada 89119  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26<sup>th</sup> day of August, 2020, I caused to be served the Notice of Entry of Order Sealing File to all interested parties as follows:

\_\_\_\_\_BY MAIL: Pursuant to NRCP S(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_\_\_BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows: his last known address

\_\_\_\_\_BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

  X  BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Attorney for Plaintiff

*Service@KainenLawGroup.com*

Dated this 26<sup>th</sup> day of August, 2020.

LAW OFFICE OF SHELLEY LUBRITZ,  
PLLC

By: *Shelley Lubritz*  
Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff



**ORDR**

Shelley Lubritz, Esq.  
Nevada Bar No. 005410  
LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 833-1300  
Facsimile: (702) 442-9400  
E-mail: [shelley@lubritzlawoffice.com](mailto:shelley@lubritzlawoffice.com)

*Attorney for Plaintiff*  
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

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

Hearing Date:  
Hearing Time:

**ORDER SEALING FILE**

The Court being fully advised in the premises, pursuant to *Plaintiff's Ex Parte Request to Seal File*, and good cause appearing,

...

...

...

...

...

**IT IS HEREBY ORDERED** that the file in the above matter, pursuant to NRS 125.110, be sealed.

Dated this \_\_\_\_\_ day of August, 2020. **Dated this 26th day of August, 2020**

Ch. B. M.  
DISTRICT COURT JUDGE      AF

Respectfully submitted:

DCB 412 9F2E A193  
Cheryl B. Moss  
District Court Judge

LAW OFFICE OF SHELLEY LUBRITZ, PLLC

By: Shelley Lubritz  
Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff

1 **CSERV**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 David Rose, Plaintiff

CASE NO: D-17-547250-D

7 vs.

DEPT. NO. Department I

8 Sarah Rose, Defendant.  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/26/2020

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scooley@cooleylawlv.com

17 Kimberly Glad

kglad@lipsonneilson.com

18 Susana Nutt

snutt@lipsonneilson.com

19 Debra Marquez

dmarquez@lipsonneilson.com

20 Julie Funai

jfunai@lipsonneilson.com

21 Racheal Mastel

Service@KainenLawGroup.com

22 David Rose

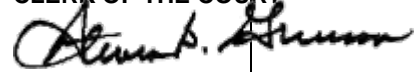
daverose08@gmail.com

23 Shelley Lubritz

shelley@lubritzlawoffice.com

24  
25  
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27  
28 APPX0583





1 **NEOJ**

2 Shelley Lubritz, Esq.  
3 Nevada Bar No. 005410  
4 LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
5 375 E. Warm Springs Road Suite 104  
6 Las Vegas, Nevada 89119  
7 Telephone: (702) 833-1300  
8 Facsimile: (702) 442-9400  
9 E-mail: [shelley@lubritzlawoffice.com](mailto:shelley@lubritzlawoffice.com)

7 *Attorney for Plaintiff*  
8 DAVID JOHN ROSE

9 CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

10 CLARK COUNTY, NEVADA

12 DAVID JOHN ROSE,  
13 Plaintiff,

14 vs.

15 SARAH JANEEN ROSE,  
16 Defendant

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

Hearing Date:  
Hearing Time:

17 **NOTICE OF ENTRY OF ENTRY OF AUGUST 6, 2020 MINUTE ORDER**

18 TO: SARAH JANEEN ROSE, Defendant and

19 TO: RACHEAL MASTEL, ESQ., her attorney:

21 . . .

22 . . .

23 . . .

24 . . .

25 . . .

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27 . . .

1 Please take notice that on August 6, 2020, a Minute Order was filed in the above-  
2 entitled matter, a copy of which is attached hereto.

3 Dated this 4<sup>th</sup> day of September, 2020.

4  
5 LEGAL SERVICES ONE, LLC

6 By. Shelley Lubritz  
7 Shelley Lubritz, Esq.  
8 Nevada Bar No. 5410  
9 375 E. Warm Springs Road Suite 104  
10 Las Vegas, Nevada 89119  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 4<sup>th</sup> day of September, 2020, I caused to be served the *Notice of Entry of August 6, 2020 Minute Order* to all interested parties as follows:

\_\_\_\_\_ BY MAIL: Pursuant to NRCP S(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows: his last known address

\_\_\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

  X   BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Attorney for Plaintiff

*Service@KainenLawGroup.com*

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

LAW OFFICE OF SHELLEY LUBRITZ,  
PLLC

By: *Shelley Lubritz*  
Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Divorce - Complaint****COURT MINUTES**

August 06, 2020

D-17-547250-D      David Rose, Plaintiff  
vs.  
Sarah Rose, Defendant.

**August 06, 2020      3:30 PM      Minute Order**

**HEARD BY:** Moss, Cheryl B.**COURTROOM:** Chambers**COURT CLERK:** Blanca Madrigal**PARTIES:**

Carson Rose, Subject Minor, not present  
David Rose, Plaintiff, Counter Defendant, not present      Shelley Lubritz, Attorney, not present  
David Rose, Subject Minor, not present  
Lily Rose, Subject Minor, not present  
Sarah Rose, Defendant, Counter Claimant, not present      Racheal Mastel, Attorney, not present

<b>JOURNAL ENTRIES</b>
------------------------

- MINUTE ORDER ENTRY: NO HEARING HELD AND NO APPEARANCES

Judge Moss heard the matter on the record via Bluejeans with Attorney Lubritz and Attorney Mastel.  
No clients present.  
Day 1 of trial commenced on 1/27/2020.

The stipulated Decree of Divorce was filed on April 11, 2018.

The Plaintiff's Motion to Set Aside was filed on 4/25/18. Defendant filed an Opposition to the Motion to Set Aside.

PRINT DATE:	08/06/2020	Page 1 of 3	Minutes Date:	August 06, 2020
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**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

APPX0587

An Evidentiary Hearing was set but continued several times until trial commenced on 1/27/2020. Day 2 of trial was continued a few times due to COVID and due to Judge Moss needing to quarantine.

Court stated it was available to conclude the last day of trial via Bluejeans. Per Administrative Court Order 20-17, trials are encouraged to proceed via alternative means.

Court advised counsel it had conducted a Bluejeans trial in another case earlier in the day, for a morning half day.

Court and counsel discussed the pros and cons and various concerns of conducting a trial by videoconferencing vs. in-person.

Attorney Lubritz requested to do trial via Bluejeans as the case has been pending for a long time, that Judge Moss has been on the case since its inception, and that there is only one day left to finish the trial. This case will likely be appealed by either side no matter the outcome of the trial court decision.

Attorney Mastel stated several concerns, including appellate record concerns, calls dropping, internet issues, not being able to see everything, not being able to effectively discuss with their clients not sitting next to them, etc., with Bluejeans trials.

At least for the rest of the year 2020, Judge Moss, Attorney Lubritz, and Attorney Mastel are unable to enter the court building due to underlying medical conditions, risk of exposure, and other health and safety concerns. Notably as well, Judge Moss's judicial term ends approximately around December 31, 2020 or a few days after.

Further, Attorney Mastel noted concerns with wearing masks and the trier of fact is unable to see facial demeanors and problems with hearing voices clearly through masks.

This trial is about whether to set aside a Decree of Divorce and the impact of the decision on a marital asset to wit: the Survivor Beneficiary Provision of Plaintiff David Rose's PERS police retirement. No child issues are involved.

Judge Moss stated it would issue the instant Court Minute Order and send a courtesy copy to the Chief Judge.

Judge Moss advised that Attorney Lubritz would have to file a Motion with the Chief Judge to decide if the trial should proceed via Bluejeans, and Attorney Mastel may file an Opposition.

PRINT DATE:	08/06/2020	Page 2 of 3	Minutes Date:	August 06, 2020
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IT IS ORDERED that the trial on August 13, 2020 shall be VACATED and the JEA shall file an Amended Order Setting Trial with a setting in early 2021 and serve both counsel electronically. If the Chief Judge directs trial via Bluejeans, the trial shall be placed back on calendar forthwith.

SO ORDERED.

**INTERIM CONDITIONS:**

**FUTURE HEARINGS:**

August 06, 2020 1:30 PM Status Check  
Moss, Cheryl B.  
Courtroom 13  
Jimenez, Erica

August 13, 2020 9:00 AM Evidentiary Hearing  
Moss, Cheryl B.  
Courtroom 13  
Jimenez, Erica

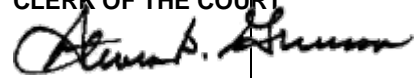
August 13, 2020 9:00 AM Motion  
Moss, Cheryl B.  
Courtroom 13  
Jimenez, Erica

PRINT DATE:	08/06/2020	Page 3 of 3	Minutes Date:	August 06, 2020
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**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

APPX0589





**MREL**

Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 833-1300  
Facsimile: (702) 442-9400  
E-mail: shelly@lubritzlawoffice.com

Attorney for Plaintiff  
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

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

Hearing Date:  
Hearing Time:

**ORAL ARGUMENT REQUESTED**

"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 FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN FOURTEEN (14) 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."

**PLAINTIFF'S MOTION FOR RELIEF PURSUANT TO  
ADMINISTRATIVE ORDER 20-17 AND FOR OTHER RELATED RELIEF**


COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley Lubritz, Esq., of Law Office of Shelley Lubritz, Esq., and submits his *Motion for Relief Pursuant to Administrative Order 20-17 and Other Related Relief*.

1 This Motion is made and based upon the papers and pleadings on file herein, the  
2 attached Declaration of David John Rose, the Declaration of Shelley Lubritz, Esq.  
3 Pursuant to Eighth Judicial District Rule 5.501, and the attached Memorandum of Points  
4 and Authorities. Plaintiff respectfully requests his Motion be granted and that Chief Judge  
5 Linda Marie Bell, issue its Order as follows:  
6

- 7 1. Pursuant to Administrative Order 20-17, the evidentiary hearing which began  
8 on January 27, 2020, shall resume, via BlueJeans.  
9  
10 2. The Hon. Cheryl B. Moss may, at her discretion, re-set day 2 of the evidentiary  
11 hearing forthwith;  
12  
13 3. Plaintiff is awarded his reasonable attorney's fees and costs for having to file  
14 this Motion; and  
15  
16 4. For any such relief as the Court deems proper in the premises.

17 Dated this 4<sup>th</sup> day of September, 2020.

18 LAW OFFICE OF SHELLEY LUBRITZ, PLLC

19 By:  \_\_\_\_\_  
20 Shelley Lubritz, Esq.  
21 Nevada Bar No. 5410  
22 375 E. Warm Springs Road Suite 104  
23 Las Vegas, Nevada 89119  
24 Attorney for Plaintiff  
25 David John Rose  
26  
27  
28

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## I. Basis of the Underlying Motion

This motion is brought pursuant to the August 6, 2020, Minute Order issued by the Hon. Cheryl B. Moss, in *Rose v. Rose* (Case No. D-17-547250).<sup>1</sup> The August 6, 2020, Minute Order arose from a brief status check as to whether counsel for the parties would stipulate to conducting Day 2 of an evidentiary hearing via BlueJeans. In its Order, the Court set forth the facts as follows,

An Evidentiary Hearing was set but continued several times until trial commenced on 1/27/2020. Day 2 of trial was continued a few times due to COVID and due to Judge Moss needing to quarantine.

***Court stated it was available to conclude the last day of trial via Bluejeans. Per Administrative Court Order 20-17, trials are encouraged to proceed via alternative means. [emphasis added].***

Court advised counsel it had conducted a Bluejeans trial in another case earlier in the day, for a morning half day.

The Court, then, summed up counsels' positions on this issue,

Attorney Lubritz requested to do trial via Bluejeans as the case has been pending for a long time, that Judge Moss has been on the case since its inception, and that there is only one day left to finish the trial. This case will likely be appealed by either side no matter the outcome of the trial court decision.

Attorney Mastel stated several concerns, including appellate record concerns, calls dropping, internet issues, not being able to see everything, not being able to effectively discuss with their clients not sitting next to them, etc., with Bluejeans trials.

<sup>1</sup> A copy of the August 6, 2020, Minute Order is attached to the companion filing as **Exhibit "1"** and is, hereby, fully incorporated herein by reference.



1 \* \* \*

2 Further, Attorney Mastel noted concerns with wearing masks  
3 and the trier of fact is unable to see facial demeanors and  
4 problems with hearing voices clearly through masks.

5 The Court concluded the Minute Order with the following remarks and subsequent  
6 Order,

7 Judge Moss advised that Attorney Lubritz would have to file a  
8 Motion with the Chief Judge to decide if the trial should  
9 proceed via Bluejeans, and Attorney Mastel may file an  
Opposition.

10 IT IS ORDERED that the trial on August 13, 2020 shall be  
11 VACATED and the JEA shall file an Amended Order Setting  
12 Trial with a setting in early 2021 and serve both counsel  
13 electronically. ***If the Chief Judge directs trial via Bluejeans,***  
***the trial shall be placed back on calendar forthwith.***  
[emphasis added].

14 Plaintiff, respectfully, requests an Order from Chief Judge Linda Marie Bell,  
15 directing that the trial proceed via BlueJeans. Given the history of this case, it is just and  
16 equitable for Judge Moss to take the remaining testimony and evidence and issue a ruling  
17 prior to her retirement on December 31, 2020.

18  
19 **II. Background**

20 On March 23, 2018, Plaintiff, David John Rose (hereinafter "David"), and  
21 Defendant, Sarah Janeen Rose (hereinafter "Sarah"), participated in a mediation presided  
22 over by Rhonda M. Forsberg, Esq. The mediation included, only, non-custodial issues.  
23 Attorney Forsberg drafted a *Memorandum of Understanding* (hereinafter "MOU")  
24 memorializing the terms of the parties' agreement. Both parties and their respective  
25 counsel signed the MOU while at Attorney Forsberg's office.  
26  
27  
28

1 At the time of the mediation, David was employed by the Las Vegas Metropolitan  
2 Police Department (hereinafter "LVMPD") and was a member of the LVMPD Public  
3 Employee Retirement System (hereinafter "PERS"). The Nevada Supreme Court has  
4 long held that a PERS pension is a community property asset to be divided upon divorce.  
5 As set forth in the MOU, Sarah was entitled to receive, "Her interest in [David's] PERS  
6 pursuant to *Gemma v. Gemma*." [emphasis in original]

8 In accordance with Nevada law, at the time of the mediation<sup>2</sup> a survivor benefits to  
9 a PERS pension, was not community property and an employee-member could not be  
10 forced to name a survivor beneficiary until retirement, if he or she chose to name one at  
11 all. While the issue of survivor benefits was addressed at the mediation, the parties did  
12 not reach an agreement. Accordingly survivor benefits were not included in the MOU and  
13 should not have been written into the Decree of Divorce (hereinafter "Decree").

15 The Decree was drafted after the mediation on March 23, 2018. The parties and  
16 their respective counsel signed the Decree that day. It was filed with the Clerk of the  
17 Court and entered on April 11, 2018. A term, not contained in the MOU, and never agreed  
18 upon by David, was added to the Decree awarding Sarah,  
19

20 One-half of the community portion, as defined within Nevada  
21 law as articulated in Gemma v. Fondi, 105 Nev. 458 (1989),  
22 and Fondi v. Fondi, 106 Nev. 856 (1990), in DAVID JOHN  
23 ROSE's Las Vegas Metropolitan Police Department Public  
24 Employees' Retirement System of Nevada Pension benefits,  
25 said pension benefits to be divided pursuant to a Qualified  
26 Domestic Relations Order ("QDRO"), based upon a selection  
27 of Option 2 being made at the time of retirement so as to name

28 <sup>2</sup> In its most recent decision on the issue, the Nevada Supreme Court did not rule that survivor  
benefits are an asset of the community. *Peterson v. Peterson*, S.C. No.: 77478.

1 SARAH JANEEN ROSE as the irrevocable survivor  
2 beneficiary of DAVID JOHN ROSE' pension benefits upon  
3 death, to divide said retirement account. [emphasis in original].

4 On April 25, 2018, fourteen (14) days later, Regina McConnell, Esq., David's  
5 former attorney, filed a *Motion to Set Aside the Paragraph Regarding Survivor Benefits in*  
6 *the Decree of Divorce Based upon Mistake* and acknowledged she "missed" the inclusion  
7 of the above-stated term. The net issue to be determined by Judge Moss at the  
8 conclusion of the evidentiary hearing is whether the paragraph in the Decree, awarding  
9 Sarah survivor benefits to David's PERS shall be confirmed or whether the provision shall  
10 be set aside. One factor in Judge Moss's decision will, necessarily, require a  
11 determination as to why the disputed term was included in the Decree.  
12

13 As this Honorable Court understands, the issue is polarizing and may be  
14 emotional; however, this Motion is not the forum for arguing the facts in dispute. The  
15 undersigned, intentionally, drafted the facts of the foregoing Motion in a neutral tenor for  
16 that very reason. The purpose of this Motion, is to seek a decision from the Hon. Chief  
17 Judge Bell as to whether day 2 of the evidentiary hearing may proceed, via BlueJeans,  
18 pursuant to Administrative Order 20-17.  
19

### 20 **III. Factual Statement**

21 As set forth below, in detail, with one exception<sup>3</sup>, Judge Moss has heard every  
22 motion filed in this matter. She has made every ruling, presided over every settlement  
23 conference, and heard all testimony given on Day 1 of the January 27, 2020, evidentiary  
24

---

25  
26  
27 <sup>3</sup> Senior Judge Kathy Hardcastle heard and granted Plaintiff's request to set aside the provision  
28 naming Sarah as the Survivor Beneficiary.



1 hearing. As is her pattern and practice, Judge Moss took copious notes during the  
2 testimony. Ms. McConnell's Motion was filed more than 28 months ago. Setting the  
3 second day of trial in 2021, more than one year after the first day of trial, to be heard by  
4 a Judge who has no experience with the case, is neither equitable nor just. Even a  
5 cursory review of the documents filed, the recorded hearings, and the first day of trial will  
6 take weeks to months. Respectfully, David is entitled to a final resolution of the issues  
7 before Judge Moss retires at the end of 2020. What follows, below, is a timeline of the  
8 motions heard and ruled on by Judge Moss and other relevant pleadings.  
9

#### 10 **Relevant Procedural History**

11  
12 2/27/17: Complaint for Divorce filed;  
13 9/26/17: Answer and Counterclaim filed;  
14 10/30/17: Stipulated Parenting Plan filed;  
15 **3/23/18: Memorandum of Understanding signed by parties and their respective**  
16 **counsel;**  
17 **4/11/18: Stipulated Decree of Divorce and Notice of Entry of Decree filed;**  
18 4/25/18: Motion to Set Aside the Paragraph Regarding Survivor Benefits in the  
19 Decree of Divorce Based upon Mistake filed;  
20 5/10/18: Defendant's Opposition to Motion to Set Aside the Paragraph Regarding  
21 Survivor Benefits in the Decree of Divorce Based upon Mistake filed;  
22 8/28/18: Motion granted by the Hon. Kathy A. Hardcastle;  
23 9/25/18: Order after Hearing filed;  
24 10/1/18: Notice of Entry of Order and Withdrawal of Counsel filed by Defendant's  
25 counsel;  
26 10/9/18: Defendant's Motion to Alter or Amend Judgment, or in the Alternative for  
27 New Trial Pursuant to NRCP 59(a)(7) and for Attorney's Fees and Costs  
28 filed by Kainen Law Group;

1 10/9/18: Statement of Legal Aid Representation and Fee Waiver filed on behalf of  
2 Defendant;

3 10/24/18: Opposition to Defendant's Motion to Alter or Amend Judgment, or in the  
4 Alternative for a New Trial Pursuant to NRCP 59(a)(7) and for Attorney's  
5 Fees and Costs; Plaintiff's Countermotion for Attorney's Fees and Costs  
6 filed;

7 10/30/18: Reply to Plaintiff's Opposition to Defendant's Motion to Alter or Amend  
8 Judgment, or in the Alternative for a New Trial Pursuant to NRCP 59(a)(7)  
9 and for Attorney's Fees and Costs and Opposition to Plaintiff's  
10 Countermotion for Attorney's Fees and Costs filed;

11 11/6/18: Motion granted by the Hon. Cheryl B. Moss;

12 1/16/19: Order from Hearing on November 6, 2018, filed;

13 1/17/19: Notice of Entry of Order filed;

14 1/22/19: Supplemental Filing filed;

15 1/29/19: Status Check re: Expert;

16 3/19/19: Status Check;

17 4/28/19: Substitution of Attorney (Shelley Lubritz, Esq. on behalf of Plaintiff) filed;  
18 5/8/19: Plaintiff's Motion to Enforce Memorandum of Understanding and for  
19 Attorney's Fees filed;

20 5/22/19: Defendant's Opposition to Plaintiff's Motion to Enforce Memorandum of  
21 Understanding and for Attorney's Fees and Countermotion for Attorney's  
22 Fees and Costs filed;

23 5/24/19: Stipulation and Order to Continue Evidentiary Hearing (First Request) and  
24 Other Deadlines, request made by Kainen Law Group due to unavailability  
25 of Racheal Mastel, Esq., filed;

26 5/30/19: Notice of Entry of Stipulation and Order to Continue Evidentiary Hearing  
27 (First Request) and Other Deadlines filed;

28 6/2/19: Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion to Enforce  
Memorandum of Understanding and for Attorney's Fees and Opposition to  
Countermotion for Attorney's Fees and Costs filed;

1 6/18/19: Motion denied by the Hon. Cheryl B. Moss and Evidentiary date  
2 confirmed;

3 9/5/19: Plaintiff's Motion in Limine to Preclude Testimony of Marshal S. Willick,  
4 Esq. and to Preclude Admission of his December 20, 2018 Report filed;

5 9/9/19: Order from Hearing on June 18, 2019 and Notice of Entry of Order of  
6 Order from Hearing on June 18, 2019 filed;

7 9/19/19: Defendant's Opposition to Plaintiff's Motion in Limine to Preclude  
8 Testimony of Marshal S. Willick, Esq. and to Preclude Admission of his  
9 December 20, 2018 Report and Countermotion for Attorney's Fees and  
10 Costs filed;

11 10/7/19: Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion in Limine to  
12 Preclude Testimony of Marshal S. Willick, Esq. and to Preclude Admission  
13 of his December 20, 2018 Report and Opposition to Countermotion for  
14 Attorney's Fees and Costs filed;

15 10/23/19: Motion granted, in part, and denied, in part, by the Hon. Cheryl B. Moss;  
16 1/13/20: Order from Hearing on October 23, 2019 and Notice of Entry of Order  
17 from Hearing on October 23, 2019, filed;

18 1/15/20: Defendant's Motion to Continue Trial (First Request) [sic], second request  
19 made by Kainen Law Group due to unavailability of Racheal Mastel, Esq.,  
20 filed;

21 1/15/20: Defendant's Ex Parte Motion for Order Shortening Time filed;

22 1/22/20: Ex Parte Order filed (no Notice of Entry of Ex Parte Order filed);

23 1/23/20: Plaintiff's Opposition to Defendant's Motion to Continue Trial (First  
24 Request) [sic] and Countermotion for Attorney's Fees and Costs filed;

25 1/27/20: Motion denied by the Hon. Cheryl B. Moss;

26 **1/27/20: Day 1 of the evidentiary hearing;**

27 3/10/20: Settlement conference presided over by the Hon. Cheryl B. Moss;

28 4/8/20: Minute Order filed;

4/10/20: Order Setting Evidentiary Hearing filed;

4/14/20: Minutes - Settlement Conference filed;



1 5/21/20: Notice of Entry of April 8, 2020 Minute Order filed;  
2 6/3/20: Motion to Amend or Add Additional Findings Pursuant to NRCP 52, 05,  
3 Alternatively, Motion for Relief Pursuant to NRCP 60(b)(6) filed;  
4 6/11/20: Ex Parte Application for Order Shortening Time filed;  
5 6/16/20: Order Shortening Time filed;  
6 6/18/20: Defendant's Opposition to Plaintiff's Motion to Amend or Add Additional  
7 Findings Pursuant to NRCP 52, 05, Alternatively, Motion for Relief  
8 Pursuant to NRCP 60(b)(6) and Countermotion for Attorney's Fees and  
9 Costs;  
10 6/26/20: Minute Order filed;  
11 7/7/20: Hearing  
12 7/10/20 Order from Hearing on February 27, 2020 filed;  
13 7/13/20: Notice of Entry of Order from February 27, 2020 filed;  
14 **8/6/20: Minute Order filed; and**  
15 8/13/20: Evidentiary hearing vacated and Motion to Amend or Add Additional  
16 Findings Pursuant to NRCP 52, 05, Alternatively, Motion for Relief  
17 Pursuant to NRCP 60(b)(6) vacated.

18 Based upon the foregoing, David requests that Chief Judge Bell issue an Order  
19 allowing Judge Moss to proceed, at her discretion, with day 2 of the evidentiary hearing  
20 via BlueJeans.

### 21 **III. Legal Argument**

22 On June 1, 2020, Chief Judge Linda Marie Bell of the Eighth Judicial District Court  
23 and Chief Justice Kristina Pickering of the Nevada Supreme Court, executed and entered  
24 Administrative Order 20 – 17. It is this Order to which David cites in support of the instant  
25 Motion,  
26  
27

1 Following the March 2, 2020, Declaration of Emergency, the  
2 District Court, in consultation with the Nevada Supreme Court,  
3 concurred with the Governor and exercised its ministerial  
4 judicial powers. The District Court entered Administrative  
5 Orders 20-01 through 20-14 and 20-16 on an emergency  
6 basis. These Orders changed Court procedures to minimize  
7 person-to-person contact and mitigate the risk associated with  
8 the COVID-19 pandemic, while continuing to provide essential  
9 Court services.

10 Since March 12, 2020, the Governor has reopened essential  
11 and non-essential businesses with certain protections in place.  
12 **As our State enters Phase 2 of recovery, in order to**  
13 **ensure access to justice and to prevent an excessive**  
14 **backlog of cases, the District Court will begin hearing all**  
15 **cases.** At the same time, the safety of the public and Court  
16 staff remains a priority. This order, entered jointly with the  
17 Chief Justice of the Nevada Supreme Court provides for  
18 continued extensive use of alternative means appearances,  
19 social distancing protocols, and mask-wearing to allow the  
20 business of the Court to go forward safely. [emphasis added]

21 Page 2, lines 16 – 28

22 Once the authority to begin hearing cases was granted to the District Court, Chief  
23 Judge Bell and Chief Justice Pickering set forth the manner in which cases shall be heard.  
24 More specifically, Administrative Order 20-17 sets forth the methods of appearances:

### 25 **Appearances by Alternative Means**

26 During this time, due to restrictions on the entrants to the  
27 Court facilities and to reduce the potential for spread of  
28 infection, appearances by alternative means are strongly  
encouraged whenever possible. This includes all case types.  
Unless exceptional circumstances exist, District Court Judges  
should accommodate requests to appear by alternative  
means for any attorney, party or witness who is considered a  
vulnerable person under Governor's Directive 21§5. This  
includes persons who are over 65, pregnant, or suffering from  
an underlying health condition.

The District Court has four methods of appearance by  
alternative means: videoconference through BlueJeans,

1 telephone conference through BlueJeans, regular telephone,  
2 and CourtCall. Since Courtcall involves a cost to the litigants,  
3 no party may be required to use CourtCall at this time. **Use of**  
4 **BlueJeans is strongly favored given the number of**  
5 **people the system can accommodate and its**  
6 **compatibility with the JAVS system. Video is also favored**  
7 **as it aids communication and produces a better record.**  
8 [emphasis added]

9 P. 5, lines 18 – 28

10 In the August 6, 2020, Minute Order, Judge Moss acknowledged the concerns of  
11 counsel and herself regarding entering the Family Court building,

12 **At least for the rest of the year 2020, Judge Moss,**  
13 **Attorney Lubritz, and Attorney Mastel are unable to enter**  
14 **the court building** due to underlying medical conditions, risk  
15 of exposure, and other health and safety concerns. **Notably**  
16 **as well, Judge Moss's judicial term ends approximately**  
17 **around December 31, 2020 or a few days after.** [emphasis  
18 added]

19 Notwithstanding the foregoing, Attorney Mastel would not stipulate to conducting  
20 day 2 of the evidentiary hearing via alternative means, such as BlueJeans. Her concerns,  
21 as detailed by Judge Moss in the August 6, 2020, Order, do not rise to a level that would  
22 separate this case from any other being conducted using BlueJeans. Rather, Attorney  
23 Mastel's "concerns with wearing masks and the trier of fact is unable to see facial  
24 demeanors and problems with hearing vices clearly through masks" supports David's  
25 request that the case proceed through alternative means.

### 26 **Attorney Obligations**

27 Attorneys, as officers of the Court, have ethical obligations for  
28 cooperative civility under normal circumstances. This Court,  
under the present circumstances, **reminds attorneys that**  
**they have an obligation to cooperate with the Courts** and  
one another as we all navigate these challenging  
circumstances. **This is not the time to press for**



1           ***unwarranted tactical advantages, unreasonably deny***  
2           ***continuances or other accommodations, or otherwise***  
3           ***take advantage of the challenges presented due to the***  
4           ***current pandemic.*** Lawyers are expected to be civil,  
5           professional, and understanding of their colleagues, parties  
6           and witnesses who are ill or otherwise unable to meet  
7           obligations because of the current restrictions. [emphasis  
8           added].

9           P. 9, lines 14 – 22

10           Attorney Mastel's refusal to move forward with the evidentiary hearing, absent an  
11           Order of the Court, could be perceived as an effort to achieve a tactical advantage. Given  
12           the fact that Judge Moss retires at the end of the year, it might also be perceived as forum-  
13           shopping. Either way, such refusal is averse to the letter and spirit of Administrative Order  
14           20-17.

### 15           **Hearings**

16           Evidentiary hearings should go forward when possible.  
17           Appearances by witnesses parties, and lawyers should be by  
18           alternative means unless the District Court Judge finds that  
19           personal appearance by an individual is necessary to the  
20           proceeding. To the extent possible exhibits should be  
21           produced, displayed, and admitted in an electronic format.

22           P. 12, lines 12 and 19 – 22

23           Given that no argument was made at the August 6, 2020, status check, as to why  
24           day 2 of the evidentiary hearing should not proceed via BlueJeans, and, given that Judge  
25           Moss is willing and able to calendar Day 2, forthwith, David respectfully requests that the  
26           Court issue an Order directing Judge Moss to resume the evidentiary hearing via  
27           BlueJeans pursuant to Administrative Order 20-17.

### 28           **Attorney's Fees**

            Fees should be awarded to David for this having to file this Motion as a result of  
            Ms. Mastel's noncompliance with the spirit and letter of Administrative Order 20-17.

1 The Nevada Supreme Court adopted four factors which, in addition to hourly time  
2 schedules kept by an attorney, are to be considered in determining the reasonable value  
3 of an attorney's services. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455  
4 P.2d 31, 33 (1969). The factors the Court must consider are "(1) the qualities of the  
5 advocate: his ability, his training, education, experience, professional standing and skill;  
6 (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and  
7 skill required, the responsibility imposed and the prominence and character of the parties  
8 where they affect the importance of the litigation; (3) the work actually performed by the  
9 lawyer: the skill, time, and attention given to the work; and (4) the result: whether the  
10 work performed by the lawyer was successful and what benefits were derived."

11  
12  
13 ***The qualities of the advocate:***

14 The undersigned is well-experienced in domestic relations law having spent the  
15 majority of her 20+ years, as a licensed Nevada attorney, in this field and is in good  
16 standing with the State Bar of Nevada. The undersigned also served as a Nevada Deputy  
17 Attorney General and a Special Assistant United States Attorney for the District of  
18 Columbia.  
19

20 ***The character of the work to be done:***

21 The work in this matter work requires something more than a passing knowledge  
22 of domestic relations law.  
23

24 ***The work actually performed by the lawyer:***

25 All work conducted in this case has been performed by the undersigned at a  
26 significantly reduced hourly rate.  
27

28 . . .

1 ***The result:***

2 Plaintiff believes he will prevail on the underlying Motion.

3 **IV. Conclusion**

4 WHEREFORE, based upon the foregoing, Plaintiff, David Rose respectfully  
5 requests that:  
6

7 1. Pursuant to Administrative Order 20-17, the evidentiary hearing which  
8 began on January 27, 2020, shall resume, via BlueJeans.


9 2. The Hon. Cheryl B. Moss may, at her discretion, re-set day 2 of the  
10 evidentiary hearing forthwith;

11 3. Plaintiff is awarded his reasonable attorney's fees and costs for having to  
12 file this Motion; and  
13

14 4. For any such relief as the Court deems proper in the premises.

15 Dated this 4<sup>th</sup> day of September, 2020.

16 LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
17

18 By:  \_\_\_\_\_  
19 Shelley Lubritz, Esq.  
20 Nevada Bar No. 5410  
21 375 E. Warm Springs Road Suite 104  
22 Las Vegas, Nevada 89119  
23 Attorney for Plaintiff  
24  
25  
26  
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2. I have read *Motion for Relief Pursuant to Administrative Order 20-17 and Related Relief* and the facts contained therein are true and correct to the best of my knowledge except as to those matters stated upon information and belief and as to those matters, I believe them to be true.

Dated this 4th day of September, 2020.

0. 

David John Rose

1                   **DECLARATION OF SHELLEY LUBRITZ, ESQ. PURSUANT TO**  
2                   **EIGHTH JUDICIAL DISTRICT COURT RULE 5.501**

3                   Shelley Lubritz, Esq. does hereby declare, pursuant to NRS 53.045 and the laws  
4 of the State of Nevada, as follows:

5                   1.       I am a duly licensed attorney in the State of Nevada. I maintain an office at  
6 375 East Warm Springs Road, Suite 104, Las Vegas, Nevada 89119. I was retained by  
7 Plaintiff, David John Rose, to represent him in Case No. D-17-547250-D.

8                   2.       In accordance with EDCR 5.501, on August 31, 2020, I served Racheal  
9 Mastel, Esq. with an EDCR 5.501 letter via Odyssey<sup>4</sup> in an effort to resolve the issues set  
10 forth, above, prior to filing this Motion.

11                   3.       Ms. Mastel was given a deadline of September 1, 2020, to respond to the  
12 letter.

13                   4.       It is three (3) days past the deadline and no response to the August 31,  
14 2020, letter has been received.

15                   5.       I have complied, fully, with the requirements of EDCR 5.501.

16 Further your declarant sayeth naught.

17                   Dated this 4<sup>th</sup> day of September, 2020.

18                     
19 Shelley Lubritz, Esq.

20  
21  
22  
23  
24  
25  
26  
27                   <sup>4</sup> A copy of the August 31, 2020, letter is attached to the companion filing as **Exhibit "2"** and is,  
28 hereby, fully incorporated herein by reference.

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 4<sup>th</sup> day of September, 2020, I caused to be served  
3 the *Motion for Relief Pursuant to Administrative Order 20-17 and Other Related Relief* to  
4 all interested parties as follows:

5 \_\_\_\_\_ BY MAIL: Pursuant to NRCP S(b), I caused a true copy thereof to be placed  
6 in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed  
7 as follows:

8 \_\_\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S.  
9 Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully  
10 paid thereon, addressed as follows:

11 \_\_\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to  
12 be transmitted, via facsimile, to the following number(s):


13  X  BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I  
14 caused a true copy thereof to be served via electronic mail, via Wiznet, to the following  
15 e-mail address(es):

16 Attorney for Defendant

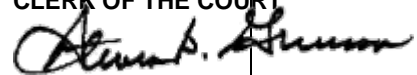
17 *Service@KainenLawGroup.com*

18 Dated this 4<sup>th</sup> day of September, 2020.

19 LAW OFFICE OF SHELLEY LUBRITZ, PLLC

20 By:  \_\_\_\_\_  
21 Shelley Lubritz, Esq.  
22 Nevada Bar No. 5410  
23 375 E. Warm Springs Road Suite 104  
24 Las Vegas, Nevada 89119  
25 Attorney for Plaintiff





**EXHS**

Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 833-1300  
Facsimile: (702) 442-9400  
E-mail: shelley@lubritzlawoffice.com

Attorney for Plaintiff  
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

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

Hearing Date:  
Hearing Time:

**ORAL ARGUMENT REQUESTED**

**EXHIBIT APPENDIX IN SUPPORT OF MOTION FOR RELIEF PURSANT TO  
ADMINISTRATIVE ORDER 20-17 AND OTHER RELATED RELIEF**

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley  
Lubritz, Esq., of the Law Office of Shelley Lubritz, PLLC and hereby submits his Exhibits  
in support of *Motion for Relief Pursuant to Administrative Order 20-17 and Other Related  
Relief.*


...

...

1. August 6, 2020 Minute Order; and
2. EDCR 5.501 letter to Racheal Mastel re: appearance by alternative means.

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

LAW OFFICE OF SHELLEY LUBRITZ, PLLC

By:   
Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff  
David John Rose

# Exhibit “1”



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Divorce - Complaint**

**COURT MINUTES**

August 06, 2020

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D-17-547250-D	David Rose, Plaintiff vs. Sarah Rose, Defendant.
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**August 06, 2020      3:30 PM      Minute Order**

**HEARD BY:** Moss, Cheryl B.

**COURTROOM:** Chambers

**COURT CLERK:** Blanca Madrigal

**PARTIES:**

Carson Rose, Subject Minor, not present	
David Rose, Plaintiff, Counter Defendant, not present	Shelley Lubritz, Attorney, not present
David Rose, Subject Minor, not present	
Lily Rose, Subject Minor, not present	
Sarah Rose, Defendant, Counter Claimant, not present	Racheal Mastel, Attorney, not present

<b>JOURNAL ENTRIES</b>
------------------------

- MINUTE ORDER ENTRY: NO HEARING HELD AND NO APPEARANCES

Judge Moss heard the matter on the record via Bluejeans with Attorney Lubritz and Attorney Mastel.  
No clients present.  
Day 1 of trial commenced on 1/27/2020.

The stipulated Decree of Divorce was filed on April 11, 2018.

The Plaintiff's Motion to Set Aside was filed on 4/25/18. Defendant filed an Opposition to the Motion to Set Aside.

PRINT DATE:	08/06/2020	Page 1 of 3	Minutes Date:	August 06, 2020
-------------	------------	-------------	---------------	-----------------

**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

APPX0611

An Evidentiary Hearing was set but continued several times until trial commenced on 1/27/2020. Day 2 of trial was continued a few times due to COVID and due to Judge Moss needing to quarantine.

Court stated it was available to conclude the last day of trial via Bluejeans. Per Administrative Court Order 20-17, trials are encouraged to proceed via alternative means.

Court advised counsel it had conducted a Bluejeans trial in another case earlier in the day, for a morning half day.

Court and counsel discussed the pros and cons and various concerns of conducting a trial by videoconferencing vs. in-person.

Attorney Lubritz requested to do trial via Bluejeans as the case has been pending for a long time, that Judge Moss has been on the case since its inception, and that there is only one day left to finish the trial. This case will likely be appealed by either side no matter the outcome of the trial court decision.

Attorney Mastel stated several concerns, including appellate record concerns, calls dropping, internet issues, not being able to see everything, not being able to effectively discuss with their clients not sitting next to them, etc., with Bluejeans trials.

At least for the rest of the year 2020, Judge Moss, Attorney Lubritz, and Attorney Mastel are unable to enter the court building due to underlying medical conditions, risk of exposure, and other health and safety concerns. Notably as well, Judge Moss's judicial term ends approximately around December 31, 2020 or a few days after.

Further, Attorney Mastel noted concerns with wearing masks and the trier of fact is unable to see facial demeanors and problems with hearing voices clearly through masks.

This trial is about whether to set aside a Decree of Divorce and the impact of the decision on a marital asset to wit: the Survivor Beneficiary Provision of Plaintiff David Rose's PERS police retirement. No child issues are involved.

Judge Moss stated it would issue the instant Court Minute Order and send a courtesy copy to the Chief Judge.

Judge Moss advised that Attorney Lubritz would have to file a Motion with the Chief Judge to decide if the trial should proceed via Bluejeans, and Attorney Mastel may file an Opposition.

PRINT DATE:	08/06/2020	Page 2 of 3	Minutes Date:	August 06, 2020
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IT IS ORDERED that the trial on August 13, 2020 shall be VACATED and the JEA shall file an Amended Order Setting Trial with a setting in early 2021 and serve both counsel electronically. If the Chief Judge directs trial via Bluejeans, the trial shall be placed back on calendar forthwith.

SO ORDERED.

**INTERIM CONDITIONS:**

**FUTURE HEARINGS:**

August 06, 2020 1:30 PM Status Check  
Moss, Cheryl B.  
Courtroom 13  
Jimenez, Erica

August 13, 2020 9:00 AM Evidentiary Hearing  
Moss, Cheryl B.  
Courtroom 13  
Jimenez, Erica

August 13, 2020 9:00 AM Motion  
Moss, Cheryl B.  
Courtroom 13  
Jimenez, Erica

PRINT DATE:	08/06/2020	Page 3 of 3	Minutes Date:	August 06, 2020
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**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

APPX0613



# Exhibit “2”



August 31, 2020

Via E-mail: [Service@KainenLawGroup.com](mailto:Service@KainenLawGroup.com)

Racheal H. Mastel, Esq.  
Kainen Law Group, PLLC 3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129

**Re: Rose v. Rose (Case No. D-17-547250-D)**

Dear Ms. Mastel,

Attached, please find a copy of my August 13, 2020, letter to you. Apparently, it was never served. The *Motion for Relief Pursuant to Administrative Order 20-17 and Other Related Relief* is drafted. Please respond to the attached letter by 5:00 p.m. on Tuesday, September 1, 2020.

If you fail to respond or if you do not consent to the use of alternative means, via BlueJeans, so the evidentiary hearing can proceed, then the Motion above referenced Motion will be filed.

Your attention to this matter is appreciated.

Regards,

  
Shelley Lubritz, Esq.

SL/

cc: Dave Rose

Enclosure as stated



August 13, 2020

Via E-mail: [Service@KainenLawGroup.com](mailto:Service@KainenLawGroup.com)

Racheal H. Mastel, Esq.  
Kainen Law Group, PLLC 3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129

**Re: *Rose v. Rose (Case No. D-17-547250-D)***

Dear Ms. Mastel,

This letter is written, pursuant to EDCR 5.501, in an effort to resolve a dispute prior to the filing of a motion for relief. At the August 6, 2020, status check, the "Court stated it was prepared to conclude the last day of trial, set for August 13, 2020 via Bluejeans." See, the attached August 6, 2020 Minute Order.

Because you opposed the use of alternative means, the evidentiary hearing was continued. Accordingly, I am, now, compelled to prepare a Motion requesting an Order from Chief Judge Bell that allows the evidentiary hearing to proceed in a manner consistent with Administrative Order 20-17. Administrative Order 20-17 was entered on the 1<sup>st</sup> day of June, 2020 by Chief Judge Bell and Chief Justice Pickering.

I believe your statements, during the August 6, 2020 status check, opposing the use of alternative means to complete the evidentiary hearing are inconsistent with the letter and the spirit of Administrative Order 20-16. Specifically, "Ms. Mastel stated several concerns, including appellate record concerns, calls dropping, internet issues, not being able to see everything, not being able to effectively discuss with their clients not sitting next to them, etc. with Bluejeans trials." See, the August 6, 2020 Minute Order.

At the status check, you "noted concerns with wearing masks and the trier of fact is unable to see facial demeanors and problems with hearing voices clearly through masks. See, the August 6, 2020 Minute Order. This argument supports the use of alternative means, not your opposition to it.



Racheal Mastel, Esq.  
August 13, 2020  
Page 2

Accordingly, I make this final request that you stipulate to the use of alternative means so that the evidentiary hearing may proceed. Please advise as to your position no later than 4:00 p.m. on Friday, August 14, 2020. If you choose to ignore this request or do not consent to the use of alternative means so the evidentiary can proceed, then a motion will be filed and an award of attorney's fees sought.

Regards,

  
Shelley Lubritz, Esq.

SL/

cc: Dave Rose

APPX0617

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 4<sup>th</sup> day of September, 2020, I caused to be served the *Exhibit Appendix in Support of Motion for Relief Pursuant to Administrative Order 20-17 and Other Related Relief* to all interested parties as follows:

\_\_\_\_\_ BY MAIL: Pursuant to NRCP S(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

\_\_\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

  X   BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Attorney for Defendant

*Service@KainenLawGroup.com*

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

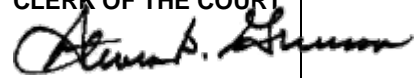
LAW OFFICE OF SHELLEY LUBRITZ, PLLC

By:   
Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*\*

Electronically Filed  
9/4/2020 5:21 PM  
Steven D. Grierson  
CLERK OF THE COURT



David Rose, Plaintiff  
vs.  
Sarah Rose, Defendant.

Case No.: D-17-547250-D  
Department I

**NOTICE OF HEARING**

Please be advised that the Pltf's Motion for Relief Pursuant to Administrative Order 20-17 and Other Related Relief in the above-entitled matter is set for hearing as follows:

**Date:** October 27, 2020  
**Time:** 9:30 AM  
**Location:** Courtroom 13  
Family Courts and Services Center  
601 N. Pecos Road  
Las Vegas, NV 89101

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Tonya Mulvenon  
Deputy Clerk of the Court

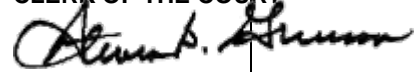
**CERTIFICATE OF SERVICE**

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

By: /s/ Tonya Mulvenon  
Deputy Clerk of the Court

APPX0619





**SUPP**

Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 833-1300  
Facsimile: (702) 442-9400  
E-mail: [shelley@lubritzlawoffice.com](mailto:shelley@lubritzlawoffice.com)

*Attorney for Plaintiff*  
*David John Rose*

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

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

Hearing Date:  
Hearing Time:

**SUPPLEMENTAL POINTS AND AUTHORITIES TO PLAINTIFF'S OPPOSITION  
TO DEFENDANT'S EX PARTE MOTION FOR EXTENSION OF TIME  
TO FILE OPPOSITION**

**AND**

**COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS**

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley Lubritz, Esq., and submits his *Supplemental Points and Authorities to Plaintiff's Opposition to Defendant's Ex Parte Motion for Extension of Time to File an Opposition and Countermotion for Attorney's Fees and Costs*. This Supplemental Opposition is made

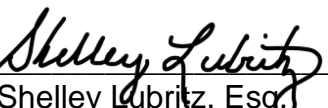
1 and based upon the papers and pleadings on file herein, the attached Declaration of  
2 Shelley Lubritz, Esq., and the attached Memorandum of Points and Authorities

3 Plaintiff respectfully requests this honorable Court issue its order and findings as  
4 follows:  
5

- 6 1. No basis exists for Ms. Mastel to have filed *Defendant's Ex Parte Motion for an*  
7 *Extension of Time to File Opposition* on an *ex parte* basis;
- 8 2. Defendant cited no caselaw or other legal authority in *Defendant's Ex Parte*  
9 *Motion for an Extension of Time to File Opposition* in violation of EDCR 2.20(f);
- 10 3. *Defendant's Ex Parte Motion for an Extension of Time to File Opposition* is  
11 denied as non-meritorious;
- 12 4. Ms. Mastel failed to attach a Declaration Pursuant to EDCR 5.501 either  
13 stating her good faith efforts to attempt resolution or why such attempts would  
14 be futile;
- 15 5. Plaintiff is entitled to an award of attorney's fees and costs pursuant to EDCR  
16 5.501 and 7.60; and
- 17 6. Any other orders this honorable Court deems just and proper in the premises.

18  
19 Dated this 18<sup>th</sup> day of September, 2020.

20  
21 LAW OFFICE OF SHELLEY LUBRITZ,  
22 PLLC

23  
24 By:   
25 Shelley Lubritz, Esq.  
26 Nevada Bar No. 5410  
27 375 E. Warm Springs Road Suite 104  
28 Las Vegas, Nevada 89119  
Attorney for Plaintiff

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On September 18, 2020, at 2:51 p.m., Defendant's counsel, Racheal Mastel, Esq., filed an *Ex Parte Motion to Extend the Time to File an Opposition to Plaintiff's Motion for Relief Pursuant to Administrative Order 20-17 and Other Related Relief*. Defendant's Opposition is due, today, September 18, 2020. The Motion was filed on the eve of Rosh Hashanah just as the undersigned would be preparing for one of the two most holy days in Judaism; thereby, causing the undersigned to be late attending religious services with her family.

Counsel set forth in the motion that she did not want to file an opposition because she is representing the Defendant pro bono. Yet, every Opposition filed by Ms. Mastel in this matter requests attorney's fees and sets forth law which states that she is entitled to attorney's fees despite her pro bono representation.

Plaintiff's motion was filed pursuant to this Court's August 6, 2020, Minute Order. As this Court will recall, the August 6, 2020, Minute Order arose from a brief status check as to whether counsel for the parties would stipulate to conducting Day 2 of an evidentiary hearing via BlueJeans. In its Order, the Court concluded its Order with the following remarks and subsequent Order,

**Judge Moss advised that Attorney Lubritz would have to file a Motion with the Chief Judge to decide if the trial should proceed via Bluejeans,** and Attorney Mastel may file an Opposition.

IT IS ORDERED that the trial on August 13, 2020 shall be VACATED and the JEA shall file an Amended Order Setting Trial with a setting in early 2021 and serve both counsel electronically. ***If the Chief Judge directs trial via Bluejeans,***

1                   ***the trial shall be placed back on calendar forthwith.***  
2                   [emphasis added].

3                   An appearance of impropriety is present as a result of the manner in which  
4 Defendant's motion was filed. It was filed without regard to Nevada's laws and rules of  
5 procedure and, as if, Defendant expected the order to be rubberstamped.

6                   No basis exists for the motion to have been filed, *ex parte*. The motion is supported  
7 neither in fact nor in law. The motion was filed on a Friday afternoon and on the day that  
8 the opposition is due. the undersigned was compelled to stop all other work and file an  
9 opposition in an effort to prevent Defendant's motion from being granted on an *ex parte*  
10 basis without objection or an opportunity for Plaintiff to be heard. The motion should be  
11 denied summarily.  
12

13  
14 **Ms. Mastel's Motion is Devoid of Any Legal Authority**

15                   Conspicuously absent from Ms. Mastel's *ex parte* motion, is a single citation in  
16 support of her claims. She cited no caselaw, no statutes, and no other legal authority.  
17 Accordingly, this Court may make an adverse presumption that the failure to comply with  
18 EDCR 2.20(c) is an admission that the *ex parte* motion is non-meritorious. The same  
19 should be denied. Rule 2.20(c) states, in pertinent part, as follows:  
20

21                   **(c)** A party filing a motion must also serve and file with it a  
22 memorandum of points and authorities in support of each  
23 ground thereof. The ***absence of such memorandum may be***  
24 ***construed as an admission that the motion is not***  
***meritorious, as cause for its denial or as a waiver of all***  
***grounds not so supported.***

25                   [Emphasis added].

26                   . . .

27                   . . .



1 **Plaintiff is Entitled to as Award of Attorney's Fees and Costs**

2 Rule 2.20(f) of the local rules of practice, gives this Court the authority to decline  
3 consideration of the Motion. EDCR 2.20(f) states, in pertinent part, as follows:

4  
5 (i) ***A memorandum of points and authorities that consists***  
6 ***of bare citations to statutes, rules, or case authority does***  
7 ***not comply with this rule and the court may decline to***  
8 ***consider it.*** Supplemental briefs will only be permitted if filed  
within the original time limitations of paragraphs (d), (e), or (g),  
or by order of the court.

9 [Emphasis added].

10 In accordance with the foregoing, Plaintiff requests that the Court exercise its  
11 discretion and decline to consider Defendant's motion.

12 Plaintiff respectfully requests that the Court grant his Countermotion for Attorney's  
13 Fees and Costs. EDCR 7.60 states, in pertinent part, as follows:

14  
15 (b) The court may, after notice and an opportunity to be heard,  
16 ***impose upon an attorney or a party any and all sanctions***  
17 ***which may, under the facts of the case, be reasonable,***  
18 ***including the imposition of fines, costs or attorney's fees***  
***when an attorney or a party without just cause:***

19 (1) ***Presents to the court a motion or an opposition to a***  
20 ***motion which is obviously frivolous, unnecessary or***  
21 ***unwarranted.***

22 (2) Fails to prepare for a presentation.

23 (3) ***So multiplies the proceedings in a case as to increase***  
24 ***costs unreasonably and vexatiously.***

25 (4) **Fails or refuses to comply with these rules.**

26 (5) Fails or refuses to comply with any order of a judge of the  
27 court.

1 Plaintiff respectfully asserts that he is entitled to attorney's fees and costs pursuant  
2 to EDCR 5.11. EDCR 5.501 states, in pertinent part, as follows:

3  
4 (a) Except as otherwise provided herein or by other rule,  
5 statute, or court order, before any family division matter  
6 motion is filed, the movant must attempt to resolve the issues  
in dispute with the other party.

7 (b) A party filing a motion in which no attempt was made to  
8 resolve the issues in dispute with the other party shall include  
9 a statement within the motion of what provision, futility, or  
10 impracticability prevented an attempt at resolution in advance  
of filing.

11 (c) Failure to comply with this rule may result in imposition of  
12 sanctions if the court concludes that the issues would have  
been resolved if an attempt at resolution had been made  
before filing.

13  
14 **IV. Conclusion**

15 WHEREFORE, based upon the foregoing, Plaintiff, David Rose respectfully  
16 requests that:

- 17 1. Defendant's motion be denied in its entirety;
- 18 2. Plaintiff is awarded his reasonable attorney's fees and costs for having to  
19 file this Motion; and
- 20 3. For any such relief as the Court deems proper in the premises.

21 Dated this 18<sup>th</sup> day of September, 2020.

22  
23 LAW OFFICE OF SHELLEY LUBRITZ, PLLC

24  
25 By:  \_\_\_\_\_  
26 Shelley Lubritz, Esq.  
27 Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119

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53.045:

2. I have read the forgoing *Supplemental Points and Authorities to Plaintiff's Opposition to Defendant's Ex Parte Motion for Extension of Time to File an Opposition and Countermotion for Attorney's Fees and Costs* and am competent to testify regarding the same. All statements set forth therein are true and correct to the best of my knowledge except for those matters stated upon information and belief and as to those matters, I believe the same to be true and correct.

*Shelley Lubritz*  
SHELLEY LUBRITZ, ESQ.

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**CERTIFICATE OF SERVICE**

On the 18<sup>th</sup> day of September, 2020, I caused *Supplemental Points and Authorities to Plaintiff's Opposition to Defendant's Ex Parte Motion for Extension of Time to File an Opposition and Countermotion for Attorney's Fees and Costs* to be served on all interested parties as follows:

\_\_\_\_\_ BY MAIL: Pursuant to NRCP S(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

\_\_\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

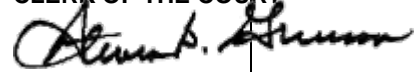
  X   BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

*Racheal Mastel, Esq.*

*Service@KainenLawGroup.com*

By:  \_\_\_\_\_  
Shelley Lubritz, Esq.





**NOTC**

Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 833-1300  
Facsimile: (702) 442-9400  
E-mail: [shelley@lubritzlawoffice.com](mailto:shelley@lubritzlawoffice.com)

*Attorney for Plaintiff*  
*David John Rose*

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

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

Hearing Date:  
Hearing Time:

**NOTICE OF NON-OPPOSITION AND REQUEST TO GRANT PLAINTIFF'S  
MOTION FOR RELIEF PURSUANT TO ADMINISTRATIVE ORDER 20-17  
AND FOR OTHER RELATED RELIEF**

Plaintiff, David John Rose, files this Notice with respect to his pending *Motion for Relief Pursuant to Administrative Order 20-17 and for Other Related Relief*, filed and served on September 4, 2020. To date, Defendant, Sarah Janeen Rose, has not filed an opposition or written statement opposing the Motion.

1 At present, Defendant has offered no opposition to Plaintiff's Motion. Defendant  
2 received Plaintiff's filing pursuant to, EDCR 7.26 and NEFCR Rule 9, via electronic mail,  
3 via Wiznet, on September 4, 2020.<sup>1</sup> As such, the opposition was due on September 18,  
4 2020. There is no argument that can be made that the failure to oppose Plaintiff's motion  
5 was inadvertent. To the contrary, on September 18, 2020, Defendant filed her *Ex Parte*  
6 *Motion for Extension to File Opposition* in which she acknowledged it was due that day.  
7 The timing of the filing, at 2:51 p.m., evidences that Defendant never intended to oppose  
8 the motion, timely, and in accordance with local rules of practice.  
9

10 EDCR 2.20(e)<sup>2</sup> allows for 14 days for an opposing party to file an opposition after  
11 being served with a motion. A party's failure to timely oppose a motion may constitute  
12 the non-moving party's consent to granting of the motion.  
13

14 For the above reasons, as well as those set forth in *Plaintiff's Motion for Relief*  
15 *Pursuant to Administrative Order 20-17 and for Other Related Relief*, Plaintiff respectfully  
16 requests that this Court consider the Motion to be consented to and grant it.  
17

18 Dated this 19<sup>th</sup> day of September, 2020.

19 LAW OFFICE OF SHELLEY LUBRITZ, PLLC

20 By: Shelley Lubritz  
21 Shelley Lubritz, Esq.  
22 Nevada Bar No. 5410  
23 375 E. Warm Springs Road Suite 104  
24 Las Vegas, Nevada 89119  
25 Attorney for Plaintiff

26  
27 <sup>1</sup> Defendant was served at [Service@KainenLawGroup.com](mailto:Service@KainenLawGroup.com) which is the service contact in Case  
No. D-17-547250-D

28 <sup>2</sup> NV ST 8 DIST CT RULE 2.20(e).

1 **CERTIFICATE OF SERVICE**

2 On the 19<sup>th</sup> day of September, 2020, I caused this *Notice of Non-Opposition and*  
3 *Request to Grant Plaintiff's Motion for Relief Pursuant to Administrative Order 20-17 and*  
4 *for Other Related Relief* to be served on all interested parties as follows:

5 \_\_\_\_\_BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed  
6 in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed  
7 as follows:  
8

9 \_\_\_\_\_BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S.  
10 Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully  
11 paid thereon, addressed as follows:  
12

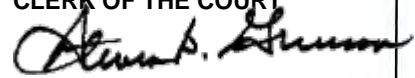
13 \_\_\_\_\_BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to  
14 be transmitted, via facsimile, to the following number(s):

15   X  BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I  
16 caused a true copy thereof to be served via electronic mail, via Wiznet, to the following  
17 e-mail address(es):  
18

19 *Racheal Mastel, Esq.*

20 *Service@KainenLawGroup.com*

21  
22 By: *Shelley Lubritz*  
23 Shelley Lubritz, Esq.  
24  
25  
26  
27



1 **RPLY**  
2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
6 KAINEN LAW GROUP, PLLC  
7 3303 Novat Street, Suite 200  
8 Las Vegas, Nevada 89129  
9 (702) 823-4900  
10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant  
13 *in conjunction with the Legal Aid Center of Southern Nevada*

8 DISTRICT COURT  
9  
10 CLARK COUNTY, NEVADA

11 DAVID ROSE,

12  
13 Plaintiff,

14 vs.

15 SARAH ROSE,

16 Defendant.  
17  
18

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing:  
Time of Hearing:

19 **REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S EX PARTE**  
20 **MOTION FOR EXTENSION OF TIME TO FILE OPPOSITION**  
21 **AND**  
22 **OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES AND**  
23 **COSTS**

24 COMES NOW, the Defendant, SARAH ROSE ("Wife"), by and through her  
25 attorneys, EDWARD KAINEN, ESQ., and RACHEAL H. MASTEL, ESQ., of the law  
26 firm of KAINEN LAW GROUP, PLLC, submits the following points and authorities in  
27  
28

...

...

...

...

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

APPX0631



1 Reply to *Plaintiff's Opposition to Defendant's Ex Parte Motion for Extension of Time to*  
2 *File Opposition and Opposition to COUNTER MOTION for Attorney's Fees and Costs.*

3 DATED this 21 day of September, 2020.

4 KAINEN LAW GROUP, PLLC

5  
6 By: 

7 RACHEAL H. MASTEL, ESQ.

8 Nevada Bar No. 11646

9 3303 Novat Street, Suite 200

10 Las Vegas, Nevada 89129

11 Attorneys for Defendant

12 **POINTS AND AUTHORITIES AND ARGUMENT**

13 Plaintiff, David Rose ("Husband") would like this Court to find that EDCR  
14 5.501 prevents Wife's request from being considered. Husband's counsel would also like  
15 this Court to find that there is a lack of equity in Wife's request, because the hearing  
16 (which has not been scheduled, and which the Court has not even indicated that it will  
17 schedule), will evidently be "too short" a time for an Opposition and response.

18 Husband's complaints are fundamentally flawed. First, the rule as to  
19 requesting an Extension of Time is not EDCR 5.501, but rather EDCR 5.512, which  
20 allows not only for a complete extension of time, but also for a temporary extension, until  
21 further efforts can be made to file a noticed Motion or obtain a Stipulation.<sup>1</sup> EDCR  
22 5.512(d). The same allowance (for a brief extension until further resolution on the request  
23 can be had by noticed Motion or Stipulation) is set forth in EDCR 2.25. Although EDCR  
24 2.25 is stricter in its allowances for an Ex Parte Motion, as it has already been noted, the

25 ...

26 ...

27 \_\_\_\_\_  
28 1  
It should be noted that, unlike Husband's claims that the Motion resulted in "ex parte communication," the same was served on Husband's counsel concurrently with filing. There was nothing "ex parte" in the manner Wife made the request.



1 Motion was not truly made Ex Parte. It was concurrently served, and Husband has  
2 opposed the same, though only to object to notice and out of fear that he will not have  
3 sufficient time to respond. As there is not hearing on the Motion to date, this Court, if it  
4 chooses to set a hearing, can ensure time for both the Opposition and the Reply.

5         The Opposition was due the day the request was made. Undersigned counsel  
6 had anticipated a response from the Chief Judge as to the viability of the Motion by that  
7 time. At present, no hearing date (either oral, or in chambers) has been set on the proper  
8 calendar. Pursuant to NRCPC 6(c), appropriate Motions must be set for hearings. EDCR  
9 5.502(b), and EDCR 2.20(b), also state that hearings must be set, either in chambers or  
10 for oral argument.<sup>2</sup>

11         As both counsel agree, this matter is to be heard by the Chief Judge. It was  
12 erroneously filed by Husband as a normal Motion in the "D" case and therefore mis-set  
13 before Judge Moss, who had already made her decision. As a result, there is no pending  
14 proper hearing. The lack of any hearing date means that the Motion isn't proper yet, and  
15 if dismissed without a hearing date, no Opposition would be required. Additionally, the  
16 fact that both counsel acknowledge that the Motion was not before the proper Court,  
17 means that the same has not been properly served and technically, no Opposition is  
18 required.

19         That said, undersigned counsel did not want the confusion of the mis-set  
20 Motion, the lack of a proper hearing date, and the original service date of the Motion  
21 (which no longer has a valid hearing date) to cause confusion, and filed the brief Ex Parte  
22 Motion to provide Notice to the Court that counsel was seeking a one week continuance,  
23 in the hope that the defects with the Motion would be cured with sufficient time for  
24 counsel to respond.

25 . . .

---

27  
28 <sup>2</sup> In fact, with regard to EDCR 2.20(b), if a designation is not made at all, the Motion is to be struck -  
clearly the hearing date is required.



1 It should be noted that NRCP 6 requires service of a Motion at least 21 days  
2 before hearing. As there is no valid Motion without a hearing date (in chambers or with  
3 oral argument), if this hearing is set before the Chief Judge, it must be set at least 21 days  
4 out, giving plenty of time for additional filings. There is no prejudice to Husband in  
5 Wife's request.

6 Additionally, there is no logic in Husband's claims that because Wife  
7 requests fees when she generally files a Motion that somehow there is no basis for trying  
8 to avoid incurring them as *pro bono* counsel. Requesting fees in a Motion does not mean  
9 they will be granted. As Husband fails to acknowledge, to date Wife has not been  
10 awarded fees. Therefore, the idea that because counsel asks for fees, she shouldn't be  
11 allowed to attempt to mitigate fees and costs is ridiculous. This argument has no rational  
12 basis.

13 Husband's counsel is also apparently angered because of the date and time  
14 that the Request was Made. The Request was made on Friday, the day the Opposition was  
15 due. Wife had done limited drafting and research for the Opposition, but as previously  
16 stated, was waiting for the Court to determine if the Motion would be heard before  
17 expending more time and costs on the Opposition.

18 When it became apparent that no confirmation or dismissal would be  
19 received by Friday, Wife's counsel put together the limited response regarding the  
20 extension of time, predominately to provide notice to the Court and Husband's counsel.

21 Wife's counsel acknowledges the request was brief. It was Wife's intention  
22 to provide the necessary information as quickly and precisely as possible. Wife's counsel  
23 is also Jewish and was doing her best to provide notice and finalize other case work, so  
24 that she could leave with sufficient time to get ready for her family's Rosh Hashanah  
25 dinner and services.

26 It was by no means undersigned counsel's intention to cause Ms. Lubritz  
27 delays in her celebration. The Motion was filed only as an intent to provide notice of the  
28 delay and anticipated date of filing, on the assumption that the hearing date would be set







1 Perhaps Wife could have filed a better brief on this issue, and for that  
2 undersigned counsel apologizes. That said, there is no error in Wife's request (except  
3 perhaps an error in titling). Wife hopes that the Court will provide its response as to  
4 whether the Motion will be considered shortly, and if it is to be considered, Wife will file  
5 her response before the end of the day on Friday, September 25, 2020.

6 DATED this 21 day of September, 2020.

7 KAINEN LAW GROUP, PLLC

8  
9 By: 

RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
Attorneys for Defendant

1                   **AFFIDAVIT OF RACHEAL H. MASTEL, ESQ., IN SUPPORT OF**  
2                   **MOTION TO COMPEL AND FOR ATTORNEY'S FEES**

3 STATE OF NEVADA        }  
4 COUNTY OF CLARK        } ss:

5                   RACHEAL H. MASTEL, ESQ., being first duly sworn, deposes and states  
6 that I am an attorney duly licensed to practice law in the State of Nevada, and in that  
7 capacity, I represent the Defendant, Sarah Rose, in the above-entitled action.

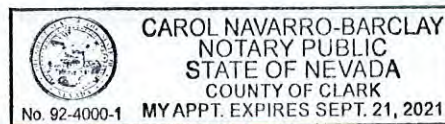
8                   That I have read through the foregoing Reply and the facts contained therein  
9 are true to the best of my knowledge except as to those matters stated upon information  
10 and belief and as to those matters, I believe them to be true.

11                   FURTHER AFFIANT SAYETH NAUGHT.

12                     
13                   \_\_\_\_\_  
14                   RACHEAL H. MASTEL, ESQ.

15 SUBSCRIBED and SWORN to before  
16 me this 21<sup>st</sup> day of September, 2020,  
17 by Racheal H. Mastel, Esq.

18                     
19                   \_\_\_\_\_  
20 NOTARY PUBLIC in and for said  
21                   County and State





**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 21<sup>st</sup> day of September, 2020, I caused to be served the *Reply to Plaintiff's Opposition to Defendant's Ex Parte Motion for Extension to File Opposition* to all interested parties as follows:


\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

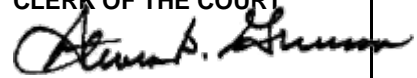
\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

**shelley@lubritzlawoffice.com**

  
An Employee of  
KAINEN LAW GROUP, PLLC



**OPP**  
EDWARD L. KAINEN, ESQ.  
Nevada Bar No. 5029  
RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
(702) 823-4900  
(702) 823-4488 (Fax)  
Service@KainenLawGroup.com  
Attorneys for Defendant  
*in conjunction with the Legal Aid Center of Southern Nevada*

DISTRICT COURT  
CLARK COUNTY, NEVADA

DAVID ROSE,

Plaintiff,

vs.

SARAH ROSE,

Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I/Chief Judge

Date of Hearing:  
Time of Hearing:

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION  
FOR RELIEF PURSUANT TO ADMINISTRATIVE ORDER 20-17  
AND FOR RELATED RELIEF**  
**AND**  
**COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS**

COMES NOW, Defendant, SARAH ROSE, by and through her attorney,  
RACHEAL H. MASTEL, ESQ., of the law firm of KAINEN LAW GROUP, PLLC, and  
submits to this Honorable Court her Opposition to *Plaintiff's Motion for Relief Pursuant  
to Administrative Order 20-17 and for Related Relief* and requests this Court award her  
Attorney's Fees and Costs.

...

...

APPX0639



1 This Opposition and Countermotion are made and based upon the pleadings  
2 on file herein, the Points and Authorities, the Affidavit and the Exhibits attached to this  
3 Opposition and argument to be adduced at the time of hearing.

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

5 KAINEN LAW GROUP, LLC

6  
7 By: /s/ Racheal H. Mastel  
8 RACHEAL H. MASTEL, ESQ.  
9 Nevada Bar No . 11646  
3303 Novat Street, Suite 200  
10 Las Vegas, Nevada 89129  
Attorneys for Defendant

11 I.

12 **POINTS AND AUTHORITIES**

13 Plaintiff, DAVID ROSE (hereinafter “Husband”), and Defendant, SARAH  
14 ROSE (hereinafter “Wife”), were married on June 17, 2006, and divorced by a Stipulated  
15 Decree of Divorce filed on April 11, 2018. Thereafter, on April 25, 2018, Husband filed  
16 a Motion to Set Aside the Decree, pursuant to NRCP 60(b). After substantial argument  
17 and additional hearings, an evidentiary hearing was scheduled to determine *whether* to  
18 set the Decree aside.<sup>1</sup> The trial was continued on more than one occasion, but ultimately  
19 began on January 27, 2020. By the end of the day, Husband had finished his case in chief,  
20 but Wife had not been able to begin hers. A second day was scheduled for April 14, 2020  
21 and counsel agreed to participate in settlement discussions with Judge Moss on March  
22 27, 2020. The settlement discussions were conducted remotely, but no agreement was  
23

24  
25 <sup>1</sup> Because this Motion is not before this Court for consideration on the underlying merits, but rather to  
26 address the single issue of Judge Moss's decision to continue the trial date, Wife is not going to spend  
27 time addressing Husband's assertions regarding the facts and law related to the merits of the case. Wife  
28 will merely assert her opposition and state that as to the underlying facts and law, as well as the actual  
purpose of the underlying trial, Wife incorporates her previous filings as to her assertions and denials.  
Wife wholly disagrees with Husband's representations to this Court as to the underlying merits of this  
case.

1 reached. Then, on April 8, 2020, the Court (Department I), issued a Minute Order  
2 continuing the trial as a result of the COVID-19 directives in place from the Governor  
3 and the Administrative Orders of the Court.

4 The trial was intended to go forward, in person on July 22, 2020. However,  
5 on July 07, 2020, the Court issued a Minute Order rescheduling the trial to August 13,  
6 2020, as Judge Moss had been directed to quarantine "just in case." Thereafter, on August  
7 6, 2020, the Court held a Status Check and Judge Moss indicated, understandably, that  
8 she was no longer comfortable holding in person hearings and would not be doing so  
9 until through the end of the year.

10 The Court provided an option to allow the second day of the trial to go  
11 forward via Bluejeans or be continued until after the first of the year. Until August 6,  
12 2020, the Court and the parties had been making every attempt to have the trial continue  
13 in person. At the time of the status check, undersigned counsel expressed several  
14 concerns with finishing the trial via Bluejeans. Both counsel on this case have  
15 acknowledged that this case is very likely to be appealed, regardless of the outcome.  
16 Therefore, multiple issues are of concern; for example, potential witness and credibility  
17 issues which would be more easily addressed in person, but likely more difficult to  
18 identify and address via video, are critical in this matter.<sup>2</sup>

19 Department I's current policy is that both parties must agree to hold the trial  
20 via Bluejeans, or the same will be continued. At least in part because of undersigned  
21 counsel's concerns, the Court has continued the trial.

22 This Court should also note that although this case has been pending longer  
23 than many, there is no immediate issue resulting from the same. Husband requested relief  
24

---

25 <sup>2</sup> To date, counsel is aware of connectivity issues (having just had a one hour hearing last three hours  
26 due to the same); potential witness issues related to individuals off screen or witnesses using notes,  
27 texting, etc; the fairly common lack of clarity of the video which interferes with the Court's ability to  
28 view body language; issues related to garbled speech, and the JAVS systems ability capture all of the  
communication in the court room. These are only the most common and concerning possibilities which  
could have an impact on the anticipated appeal.

1 is to set aside the provision of the Decree which requires him to name Wife as the  
2 beneficiary of his PERS account. He can change that beneficiary (or name one) until the  
3 day he retires. Husband is more than 12 years away from retiring at a minimum. Although  
4 no one wants this case to be unnecessarily prolonged, a six month delay will not prejudice  
5 Husband in the relief he has sought.

6 This Court should be aware that Husband's Motion also makes an  
7 inappropriate, and knowingly false statement, to wit: that undersigned counsel is seeking  
8 an "inappropriate tactical advantage," and "may be forum-shopping." Husband's counsel  
9 absolutely knows that is not true and her claim is willfully false. As the hearing video  
10 from that status check will confirm, undersigned counsel *agreed* that it was preferable for  
11 Judge Moss to finish the case. Undersigned counsel even pointed out her belief that Judge  
12 Moss would be allowed to finish the trial after her retirement, and assured both the Court  
13 and counsel that she would make no objection to the same. The fact of the matter is that  
14 undersigned counsel has an obligation to protect Wife's interests. *Knowing* the probability  
15 of this case going up on appeal, counsel has a obligation to ensure that a complete and  
16 accurate record is available for the appeal, and to make every attempt to avoid due  
17 process issues.

18 Husband has filed this Motion to request intervention by the Chief Judge to  
19 supplant Department I's Order, and *order* undersigned counsel to participate in the second  
20 day of trial by the method Husband wants. This is not among the Chief Judge's  
21 responsibilities, nor is it proper under the current Administrative Order, 20-17.

22 The responsibilities of the office of the Chief Judge are set forth in NRS  
23 3.025 and 3.026 and EDCR 1.30, 1.31, 1.33, et al. Those responsibilities can be summed  
24 up as overseeing the efficient and appropriate administration of the Court. Those duties  
25 do involve ensuring the timely disposition of cases and addressing grievances by parties  
26 related to the administration of cases. NRS 3.026(1)(a)(2) and (1)(b). Those duties also  
27 include ensuring that cases are managed as uniformly as possible. NRS 3.026(1)(a)(1).  
28 Those duties, however, specifically *do not include* oversight or "interlocutory appeal" on

1 the merits of the decision made by at District Court Judge or Hearing Master. NRS  
2 3.026(2)(b). In other words, while a grievance related to the delay of cases resulting from  
3 a District Court department's calendar may be appropriate before the Chief Judge, a  
4 request to reverse a District Court's Order granting a continuance would not be. EDCR  
5 7.10 also makes it clear that it would be beyond the scope of the responsibilities of the  
6 Chief Judge to enter the Order Husband is requesting.

7 Further, the current Administrative Order, 20-17, leaves to the discretion of  
8 the Court whether or not it is necessary to have a trial held in person, to wit:

9 Evidentiary hearings should go forward when possible.  
10 Appearances by witnesses, parties, and lawyers should be by  
11 alternative means unless the District Court Judge finds that a  
personal appearance by an individual is necessary to the  
proceeding.

12 Page 12, lines 19-22. **See also** Page 16, lines 9-11.

13 The Order also contemplates a complete stay of a civil case (to be decided  
14 on a case-by-case basis). **See** Page 19, lines 1-4. Domestic cases are civil cases.

15 It is clear that the Administrative Order, while attempting to keep cases  
16 moving with some semblance of normalcy, also contemplated the necessity to give  
17 substantial discretion to the individual District Court departments to manage their  
18 calendars for the greatest equity of each individual case. Judge Moss held a status check  
19 hearing and took argument from both parties as to the merits of either continuing the trial  
20 until it could be held in person, or ordering the same to occur via Bluejeans. Ultimately,  
21 after letting both parties be heard on the issue, she determined that it was appropriate to  
22 continue the trial. Not only would *over-ruling* that decision be beyond the scope of the  
23 responsibilities of the Chief Judge under the statute, Judge Moss's decision was  
24 completely proper under Administrative Order 20-17.

25 Husband would like this Court to determine, administratively, that there  
26 would be substantial prejudice to him, if this matter is continued into 2021. As previously  
27 stated, that is factually untrue. More importantly, however, determining prejudice is *per*  
28 *se* a decision on the merits. Further, Wife's allegation in during the hearing, addressed the



1 concern of prejudice to her, if the trial went forward via Bluejeans. It is not within the  
2 scope of the duties of the Chief Judge to weigh and balance potential issues of prejudice.  
3 The authority to review a District Court's decision in that matter lies with the Appellate  
4 Courts.

5 Because Husband believes he will be prejudiced by the delay, his remedy  
6 lies in filing a *Writ* Petition, not in a Motion to this Court. What Husband is requesting  
7 of this Court is beyond its scope. Further, there was nothing improper about the Order  
8 issued by Judge Moss. There is no basis for the relief Husband is seeking.

9 There is no legal basis for Husband's Motion. It is a clear violation of NRC  
10 11, NRS 7.085 and EDCR 7.60. Wife is entitled and deserving of fees pursuant to the  
11 same as well as NRS 18.010(2)(b).

12 Although it may be compelling to suggest that since Wife is ably represented  
13 in *pro bono* capacity, no award of fees is necessary, the case law does not support that  
14 conclusion. The initial premise of *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005)  
15 articulated at page 729 - 730 states:

16 Initially, we conclude that a party is not precluded from  
17 recovering attorney fees solely because his or her counsel  
18 served in a *pro bono* capacity. While Nevada law has been  
19 silent on this issue, many courts have concluded that an award  
20 of attorney fees is proper, even when a party is represented  
21 without fee by a nonprofit legal services organization. In  
22 addition to the various state courts, the United States Supreme  
23 Court has concluded that an award of attorney fees to a  
24 nonprofit legal services organization is to be calculated  
25 according to the prevailing market rate, stating that "Congress  
26 did not intend the calculation of fee awards to vary depending  
27 on whether plaintiff was represented by private counsel or by  
28 a nonprofit legal services organization." We agree with these  
courts and conclude that significant public policy rationales  
support awarding fees to counsel, regardless of counsel's  
service in a *pro bono* capacity. First, the fact that a government  
institution or private charity has provided legal assistance  
should not absolve other responsible parties of their financial  
obligations. For example, when *pro bono* counsel assist a parent  
in a custody or child support dispute, the wealthier parent  
should not be relieved of an obligation to pay attorney fees.  
Further, in domestic matters, one partner has often created or  
contributed to the other partner's limited financial means by  
leaving the household, failing to remit child support, drawing  
funds from a shared account, or other similar conduct. In those

cases, if fees are not awarded to pro bono counsel, a wealthier litigant would benefit from creating conditions that force the other party to seek legal aid. In addition, pro bono counsel serve an important role in the legal system's attempt to address the unmet needs of indigent and low-income litigants within our state. To impose the burden of the cost of litigation on those who volunteer their services, when the other party has the means to pay attorney fees, would be unjust.

It is clear from the language in *Miller v. Wilfong*, that it is appropriate to award a party fees when that party has been represented *Pro Bono*. Although the Court is also to consider the *Brunzell* factors (which will be addressed below), in *Pro Bono* cases there are also further equitable considerations, as delineated above, to wit: that *pro bono* services do not absolve responsible parties of their financial obligations (such as those due under *Sargeant v. Sargeant*, 88 Nev. 223, 495 P.2d 618 (1972); *Leeming v. Leeming*, 87 Nev. 530, 490 P.2d 342 (1971); *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262 (1998).), that, **“to impose the burden of the cost of litigation on those who volunteer their services, when the other party has the means to pay attorney’s fees, would be unjust.”**

Pursuant to Brunzell v. Golden Gate National Bank, 85 Nev. 455 P.2d 31 (1969), in the case at bar, the Court should consider the following factors in awarding

**1. Qualities of Wife's Advocate**

The qualities of Wife's attorneys are excellent. Racheal Mastel is a partner with *Kainen Law Group, PLLC*. She is a Fellow of the American Academy of Matrimonial Lawyers, a Nevada Board Certified Specialist in Family Law and has practiced exclusively in the area of Family Law for approximately 11 years. Ms. Mastel has been named as a "Rising Star" in Super Lawyers Magazine for the Mountain States Region, which includes Nevada, Idaho, Montana, Utah and Wyoming on multiple occasions. Ms. Mastel has written extensive CLE materials on various aspects related to the practice of family law and was appointed by the Nevada Supreme Court to the Rules

...

...

1 of Civil Procedure Committee, to conduct a major review and overhaul of all of the  
2 Nevada Rules of Civil Procedure as the representative of the Family Law Section on that  
3 Committee.

4 Clearly, Wife attorneys are experienced, well trained and qualified in relation  
5 to the fees charged for there services in this matter. Ms. Mastel's hourly rate is \$375.  
6 Paralegals were also utilized where possible, at lesser rates.

7 **2. The Character of the Work Done**

8 In this instance, Wife's counsel is charged with the task of Opposing  
9 Husband's Motion to have this Court intervene and overturn an Order by a District Court  
10 Judge. Wife has attempted to provide a succinct response to the Motion, identifying the  
11 legal bases under which Husband's Motion fails. Under the circumstances of this case, the  
12 character of the work completed certainly justifies the fees incurred in this matter.

13 **3. The Work Actually Performed**

14 Wife's attorneys have made every effort to be as efficient as possible in  
15 completing the necessary work to obtain favorable results for her. The amount of fees and  
16 costs accurately reflects the actual work done in this matter. The work was completed in  
17 the most cost efficient manner to minimize the over all fees and costs incurred. A copy of  
18 such redacted billing as reflects the work actually performed can be provided after the  
19 hearing on this matter, if requested by the Court.

20 **4. The Results**

21 The final factor adopted in Brunzell is whether the attorney was successful  
22 and what benefits were derived. It is anticipated that Wife will be successful at the  
23 hearing on this matter, as Husband's Motion has no legal basis.

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III.

**CONCLUSION**

Wife requests that Husband's Motion be denied *in toto* and that Wife be awarded her attorney's fees for the necessity of opposing the same.

Respectfully submitted this 25<sup>th</sup> day of September, 2020.

KAINEN LAW GROUP, PLLC

By: /s/ Racheal H. Mastel  
RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
Attorneys for Defendant



**DECLARATION OF COUNSEL IN SUPPORT OF OPPOSITION**

I, RACHEAL MASTEL, declare under penalty of perjury that I am counsel for the Defendant herein and that I have read the foregoing *Defendant's Opposition to Plaintiff's Motion for Relief Pursuant to Administrative Order 20-17 and for Related Relief and Countermotion for Attorney's Fees and Costs*, and the same is true and correct of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

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

/s/ Racheal H. Mastel  
RACHEAL H. MASTEL, ESQ.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25<sup>th</sup> day of September, 2020, I caused to be served the *Defendant's Opposition to Plaintiff's Motion for Relief Pursuant to Administrative Order 20-17 and for Related Relief and Countermotion for Attorney's Fees and Costs* to all interested parties as follows:

\_\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

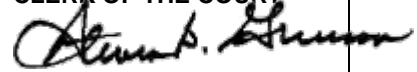
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  X   BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

*Counsel for Plaintiff:*

**shelley@lubritzlawoffice.com**

          /s/ Carol Navarro            
An Employee of  
KAINEN LAW GROUP, PLLC



1 DECN  
2  
3

4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**  
6

7 DAVID ROSE,  
8

9 Plaintiff,

Case No. D-17-547250-D

10 vs.  
11

Dept. No. I

12 SARAH ROSE,  
13

14 Defendant.  
15 \_\_\_\_\_/

16  
17 **COURT MINUTE DECISION**  
18

19 On September 04, 2020 Plaintiff's Counsel filed a Motion for Relief  
20 Pursuant to Administrative Order 20-17 and for Other Related Relief.  
21

22  
23 On September 25, 2020 Defendant's Counsel filed their Opposition and  
24 Countermotion for Attorney's Fees and Costs.  
25  
26  
27  
28

1 As previously stated at the Bluejeans hearing on August 6, 2020, the Court  
2 discussed with both counsel as to how the Evidentiary Hearing in this matter  
3 could be finished.  
4

5  
6 The Court is cognizant of its duty to sit and complete trials. However, due  
7 to COVID and the pandemic's impact on the Court's case docket, the trial in this  
8 case was impacted along with other pending trials. The Chief Judge issued  
9 several Administrative Orders. In those Administrative Orders, trials should  
10 proceed "when possible", and the Court shall be permitted to hear testimony from  
11 the parties and witnesses unless personal appearance is necessary.  
12  
13

14  
15 The Court makes the following Findings:  
16

17 The Court was available to do the trial virtually via BlueJeans with the  
18 capability of recording the trial proceedings.  
19

20 The Court completed a few trials in 2020 via BlueJeans wherein both sides  
21 made themselves available.  
22

23 The undersigned judge is retiring from the bench at the end of December  
24 2020.  
25  
26  
27  
28



1 Father's counsel and Father already advised the Court at the last hearing  
2 that they were ready and available to do the trial over BlueJeans, and that they are  
3 technologically capable of doing the trial virtually.  
4

5  
6 Mother's counsel previously advised the Court of their concerns as  
7 enumerated in their most recently-filed Opposition. Mother's counsel requested  
8 that the trial be completed in-person. Thereafter, Father's counsel objected.  
9

10  
11 The Court stated its concerns at the prior BlueJeans hearing, and submits  
12 additional Findings for this Court Minute Decision and Order.  
13

14 This is a very high conflict case and no matter the outcome, one of the  
15 parties will appeal the trial decision. Accordingly, the parties and their counsel  
16 will want to ensure that an accurate record is made.  
17

18  
19 An in-person trial provides the Court with the ability to see everything in  
20 the courtroom, including the demeanors of the parties and the witnesses.  
21

22 The undersigned judge is unable to return to her courtroom until it is safe to  
23 do so without being forced to disclose whether she or a family member is at risk  
24 for COVID or has a medical condition. This applies to both counsel as well.  
25

26  
27 Certain lawyers are unable to come into the Courthouse, a public building  
28 where over a dozen reported cases of COVID have already occurred.

1 Some lawyers are unable to remain in the courtroom and wear a mask for the  
2 entire duration of the trial citing panic disorders and anxiety attacks.  
3

4  
5 The District Court has implemented the use of clear masks and face shields  
6 for trials, but certain individuals, attorneys and witnesses alike, have anxiety  
7 attacks and other physiological conditions that make it difficult for them to  
8 remain in the courtroom for an extended duration. There is an absolute strict  
9 requirement for masks in the courtroom. Neither the judge in this case nor both  
10 counsel should be placed in a situation where they would be forced to disclose  
11 personal or health information about why they can or cannot endure wearing  
12 masks in the courtroom for any given length of time.  
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16 It is the Court's understanding that Mother's counsel asserted that she is  
17 unable to enter a courtroom until it is safe. The Court is mindful also that Mother  
18 has a right to counsel of her choice, and she should not be forced to retain a new  
19 lawyer to start all over again if the trial were to be done over BlueJeans. Mother's  
20 counsel expressly stated that the only way to have a fair trial is to have an in-  
21 person trial given the contentiousness of this case and the less likelihood of  
22 irregularities occurring in the courtroom.  
23  
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26 Some of those concerns are whether a testifying person was surreptitiously  
27 looking at notes or texting another, and whether the judge saw a party's real time  
28

1 reaction and their body language in the courtroom. Additional concerns are  
2 whether the audio or video cut out on their end, and they did not hear everything  
3 the judge, the lawyer, or the witness said. It has also been observed that a lawyer  
4 can simply mute their audio and the opposing party will question what was being  
5 said. If there are some alleged procedural errors during trial, they leave open the  
6 possibility of one party filing a motion for new trial.  
7  
8

9  
10 With this being a high conflict case, each side will be scrupulously taking  
11 note of every word spoken, every action, every procedure, every move, and  
12 everything else they can possibly see and observe on BlueJeans as a basis for  
13 appeal. Granted, the same can be said for an in-person trial, but it is less likely to  
14 occur if it was in-person.  
15  
16

17 Additionally, the Court finds that several settlement conferences have taken  
18 place with both Counsel participating in good faith.  
19  
20

21 The competing considerations between the undersigned judge's duty to sit  
22 and duty to conclude this unfinished trial are outweighed by the potential and  
23 very important concerns raised by Mother's counsel concerning her client's ability  
24 to have a trial with an accurate and complete trial record. The Court reiterates  
25 that a few unfinished trials were completed after the pandemic but only because  
26  
27  
28

1 both sides stipulated to do the trial over BlueJeans. In this case, one party is  
2  
3 objecting and provided bona fide reasons for their request for an in-person trial.

4  
5 Mother and her counsel do not waive their right to have an in-person trial  
6 based on the above-noted concerns. Those concerns are reasonable and  
7 compelling in the Court's view and considering the potential prejudice to one or  
8 both parties. If the trial is completed over BlueJeans, one party will appeal  
9 claiming that the Court was not able to see and hear everything. Moreover,  
10 exhibits that are flashed via the "Share Screen" function may involuntarily cause  
11 the Court to see exhibits that are potentially deemed inadmissible. It has also  
12 been known to happen that in the middle of proceedings, a party or a witness will  
13 drop off the BlueJeans session due to unforeseen technical difficulties. With an  
14 in-person trial, that is less likely to happen.  
15  
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19 Based on the above and foregoing and review of the papers and pleadings  
20 filed to date, IT IS ORDERED that Father's Motion is DENIED WITHOUT  
21 PREJUDICE.  
22

23 IT IS FURTHER ORDERED that the hearings set on the Court's Calendar  
24 on October 27, 2020 at 9:30AM is VACATED.  
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28

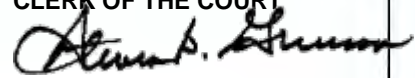


1 A copy of this Court Minute Decision shall be served electronically. The  
2  
3 Court shall prepare the Findings and Orders of the Court Re: Trial

4  
5 SO ORDERED.

6  
7 Dated this 21<sup>st</sup> day of October, 2020.

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11 **CHERYL B. MOSS**  
12 **District Court Judge**  
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1 **MOT**

2 RACHEAL H. MASTEL, ESQ.

3 Nevada Bar No. 11646

4 KAINEN LAW GROUP, PLLC

5 3303 Novat Street, Suite 200

6 Las Vegas, Nevada 89129

7 (702) 823-4900

8 (702) 823-4488 (Fax)

9 Service@KainenLawGroup.com

10 Attorneys for Defendant

11 *in conjunction with the Legal Aid Center of Southern Nevada*

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 DAVID ROSE,

15 Plaintiff,

16 vs.

17 SARAH ROSE,

18 Defendant.

CASE NO.

D-17-547250-D

DEPT NO.

I / Senior Judge

Cynthia Diane Steele

Date of Hearing:

Time of Hearing:

ORAL ARGUMENT REQUESTED?

YES \_\_XX\_\_ NO \_\_\_\_\_

19 **NOTICE: PURSUANT TO EDCR 5.502(a) YOU MAY FILE A WRITTEN**  
20 **RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND**  
21 **PROVIDE THE UNDER-SIGNED WITH A COPY OF YOUR RESPONSE**  
22 **WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION.**  
23 **FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE**  
24 **COURT WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS**  
25 **MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY**  
26 **THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING**  
27 **DATE.**

28 **DEFENDANT'S MOTION FOR JUDGMENT PURSUANT TO NRCP 52(c)**  
**OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT**

COMES NOW, Defendant, SARAH ROSE, by and through her attorney,  
RACHEAL H. MASTEL, ESQ., of the KAINEN LAW GROUP, PLLC, and moves this  
Honorable Court for a Judgment pursuant to NRCP 52(c) on Plaintiff's Motion to Set  
Aside the Decree and for attorney's fees related to this matter.

...

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APPX0657



1 This *Motion* is made and based upon the Points and Authorities submitted  
2 herewith, the Affidavit of counsel submitted herewith and oral argument of counsel at the  
3 time of the hearing of this matter.

4 DATED this 12 day of February, 2021.

5 KAINEN LAW GROUP, PLLC

6 By: 

7 RACHEAL H. MASTEL, ESQ.

8 Nevada Bar No. 11646

9 3303 Novat Street, Suite 200

10 Las Vegas, Nevada 89129

11 Attorney for Defendant

12 I.

13 POINTS AND AUTHORITIES AND ARGUMENT

14 A. Procedural Background

15 Defendant, SARAH ROSE (hereinafter "Sarah"), and Plaintiff, DAVID  
16 ROSE (hereinafter "David"), were divorced by a Stipulated Decree of Divorce filed on  
17 April 11, 2018. Shortly thereafter, on April 25, 2018, David filed a Motion to Set Aside  
18 the Decree of Divorce, as it related to the survivor benefit option awarded to Sarah, on  
19 the basis of "mistake." David claimed that neither he nor his counsel at the time (Regina  
20 McConnell, Esq.) actually read the Decree before signing it and did not realize that the  
21 survivor benefit option had been included. A hearing was held on August 28, 2018, with  
22 Judge Kathy Hardcastle sitting for Judge Moss in Department I. Judge Hardcastle did not  
23 address the merits of David's Motion. Rather, Judge Hardcastle decided that she was  
24 unfamiliar with any law that allowed parties to dictate survivor benefits in a Decree prior  
25 to a party retiring and Ordered the provision struck on that basis. ***See Order filed***  
***September 25, 2018.***

26 Sarah thereafter hired undersigned counsel who filed a Motion to Alter and  
27 Amend, as Judge Hardcastle's decision was based on a misunderstanding of the law.  
28 David opposed the Motion, and Judge Moss heard argument regarding the same on  
November 6, 2018. Sarah's request to have Judge Hardcastle's Order set aside was



1 **granted.** Sarah also alleged that David's Motion failed as a matter of law, because his  
2 choice not to read the Decree (if that was indeed the case) did not constitute a "mistake"  
3 pursuant to NRCP 60(b). The Court set an evidentiary hearing to determine the intent of  
4 the parties, why the survivorship option was included, and whether or not the same was  
5 void as a matter of law. **See Order filed January 16, 2019.**

6 Prior to any trial on this matter, David fired Ms. McConnell and retained  
7 Shelley Lubritz, Esq., to represent him. After retaining Ms. Lubritz, David filed a second  
8 Motion (on May 8, 2019), arguing that the Memorandum of Understanding (MOU),  
9 which was prepared *prior* to the Decree, was the only proper contract and that the Court  
10 should enforce that in lieu of the Decree itself.<sup>1</sup> Sarah opposed the same and the Court  
11 held a hearing on June 18, 2019, acknowledging that the new Motion raised the question  
12 as to whether there was a merger of the MOU into the Decree, or whether the Decree  
13 were a second contract, and what impact either of those would have on David's request  
14 to have the survivor benefit provision removed at the time of trial.

15 The first day of trial occurred on October 23, 2019. *See Transcript Re: All*  
16 *Pending Motions Volume I and II, filed concurrently herewith.* David put on his case in  
17 chief and rested (*Transcript Re: All Pending Motions*, VII: Pg 238 lines 11-12), but due  
18 to Ms. Lubritz renewing her Motion in Limine with regard to Sarah's first witness  
19 (Marshal Willick, Esq.) the Court recessed before Sarah was able to put on her case. The  
20 Court then conducted multiple settlement conferences. Because of those conferences and  
21 issues related to the pandemic (as well as the Administrative Orders of the Court related  
22 to the same), the second day of trial has not yet occurred.

23 **B. Facts**

24 The parties engaged in mediation with Judge Rhonda Forsberg in 2018 (prior  
25 to her appointment to the bench). At the time, Sarah was represented by Shelly Cooley,  
26 Esq. At the end of the mediation, the parties signed a MOU reflecting the general terms  
27

28 <sup>1</sup> The MOU does not mention survivor benefits.



1 of their agreement. The MOU specifically stated:

2           The memorandum addresses the material terms of the  
3 agreement, and is intended to bind the parties to those terms.  
4 *The parties agree, however, that counsel for Sarah shall draft  
a final formal agreement incorporating the terms herein.*

5 **See “Exhibit “1.”**

6           Immediately after signing the MOU, Ms. Cooley attempted to draft the  
7 Decree, while the parties were still in the same room.<sup>2</sup> Unfortunately, Ms. Cooley’s laptop  
8 battery died. As a result, the parties relocated to Bruce Shapiro, Esq.’s office to finish  
9 drafting the Decree.<sup>3</sup> All of the parties were present during the drafting process.<sup>4</sup> Once  
10 the Decree was drafted, a copy was printed for each party to review.<sup>5</sup>

11           It was David’s testimony at trial that Ms. McConnell told him to sign it  
12 without reading it, and that she would review it after and make any changes necessary  
13 once it was signed. *Transcript Re: All Pending Motions*, VII: Page 185 lines 9 -20. Ms.  
14 McConnell’s testimony did not concur. Specifically, Ms. McConnell testified:

15           Q: Did David have an opportunity to review [the Decree].

16           A: There was a copy for everyone at the end.

17           Q: Okay. And David signed it?

18           A: Yes.

19 \_\_\_\_\_  
20 <sup>2</sup> The reason for the MOU (despite the fact that the parties intended to draft the Decree immediately)  
was due to the fact that Judge Forsberg needed to leave.

21 <sup>3</sup> **Testimony of Ms. McConnell** *Transcript Re: All Pending Motions*, VI: Pg 141 lines13-17, Pg 150  
22 line 17 - Pg 151 line 5, Page 154 lines 13-19;

**Testimony of Sarah** *Transcript Re: All Pending Motions*, VI: Pg 113 line 10 - Pg 114 line 19;

23 **Testimony of David** *Transcript Re: All Pending Motions*, VI: Pg 133 lines 3-13.

24 <sup>4</sup> **Testimony of Ms. McConnell** *Transcript Re: All Pending Motions*, VI: Pg 156 line 3 - Page 157 line  
25 4;

**Testimony of Sarah** *Transcript Re: All Pending Motions*, VI: Pg 117 line 1 - Pg 118 line 14, Pg 123  
26 line 18 - Pg 125 line 22;

**Testimony of David** *Transcript Re: All Pending Motions*, VII: Pg 181 lines 9 -23, Pg 183 line 16 - 21.

27 <sup>5</sup> **Testimony of Ms. McConnell** *Transcript Re: All Pending Motions*, VI: Pg 157 lines 5-9;

28 **Testimony of David** *Transcript Re: All Pending Motions*, VII: Pg 185 lines 7-10.



1 Q: You signed it?

2 A: Yes.

3 Q: You wouldn't have signed the decree unless you knew that David had read  
4 it and fully understood it, would you?

5 A: It – I have all my clients review it, if they have any questions they ask me.  
6 So –

7 Q: Okay. And so to the best of your understanding, but you would not have  
8 signed it if you thought he hadn't reviewed it and understood it?

9 A: Well, I can really know if someone understands something.

10 Q: If he had told you he didn't understand something, would you have signed  
11 it?

12 *Transcript Re: All Pending Motions, VI, Pg 157 lines 8 - 24.*

13 Ms. McConnell's testimony is more credible. For one, she has an ethical  
14 obligation of Candor to the Court and is unlikely to risk her licence for a single client by  
15 perjuring herself. For another, Ms. McConnell is not a "greenhorn." She is well aware  
16 that signing a document means accepting the terms therein. It is inconceivable that she  
17 would direct a client to sign a document that they have not reviewed, or represent to them  
18 that the proper procedure would be to request changes *after* signing a document. In  
19 contrast, however, it is conceivable that a party would have buyer's remorse and change  
20 their mind after signing an agreement. That said, "buyer's remorse" is not a basis for  
21 setting aside a Decree. Nothing in David's case in chief credibly sets forth a mistake,  
22 inadvertence, surprise or excusable neglect.

23 With regard to a "mistake," there are two kinds of mistakes which may result  
24 in setting aside a Decree - unilateral or mutual. A unilateral mistake may be utilized to  
25 set aside a Decree:

26 Where a mistake of one party at the time a contract was made  
27 as to a basic assumption on which he made the contract has a  
28 material effect on the agreed exchange of performances that is  
adverse to him, the contract is voidable by him if he does not  
bear the risk of the mistake under the rule stated in § 154, and



1                   \* \* \*  
2                   \* \* \*

3                   (b) the other party had reason to know of the mistake or  
4                   his fault caused the mistake.  
5                   *Home Savers, Inc. v. United Sec. Co.*, 103 Nev. 357, 358-359,  
6                   741 P.2d 1355, 1356-1357 (1987), quoting *Restatement*  
7                   *(Second) of Contracts*, ss 153 (1981).

8                   Here, any mistake by David was clearly his risk. He was present and able to  
9                   be involved with the drafting of the Decree. In fact, he was standing in the doorway of  
10                  the office in which Ms. Cooley was drafting the Decree, while Ms. McConnell was  
11                  present with her, and able to also review the Decree. He was provided a copy and given  
12                  an opportunity to review the Decree. He created and bore the risk of a mistake by  
13                  choosing not to read the Decree before signing (if that is even true, rather than a  
14                  convenient excuse for his “buyer’s remorse”). Sarah, who was reviewing the Decree in  
15                  a separate room, had no reason to know that David would choose not to read, and she has  
16                  no fault in his choice. It is clear that David’s alleged “unilateral” mistake is not a basis  
17                  for setting aside the Decree.

18                  Further, there is no mutual mistake. A mutual mistake “occurs when both  
19                  parties, at the time of contracting, share a misconception about a vital fact upon which  
20                  they based their bargain.” *Anderson v. Sanchez*, 131 Nev. Ad. Op 51, 355 P.3d 16, 23  
21                  (2015). Sarah reviewed the Decree. Sarah was aware that the parties had negotiated after  
22                  mediation to include the survivor benefits, and Sarah was aware of the inclusion in the  
23                  Decree.<sup>6</sup> She was under no misconception of any vital fact. It is clear that there was no  
24                  mutual mistake.

25                  To set a Decree aside for inadvertence or neglect, the same must be  
26                  excusable. *Bryant v. Gibbs*, 69 Nev. 167, 243 P.2d 1050, 1051 (1952). Further, the  
27                  purpose of NRCP 60(b) “is to redress any injustices that may have resulted because of  
28                  excusable neglect or the wrongs of an opposing party.” *Nev. Indus. Development, Inc.*,

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<sup>6</sup> It is still Sarah’s position that David was also aware, but for the purpose of this Motion, her point is that even if David were telling the truth, there is still no basis to set aside the Decree.



1 v. *Benedetti*, 103 Nev. 360, 741 P.2d 802, 805 (1987). There is no injustice where a  
2 party's choices are what resulted in the Decree.

3           There is no excusable inadvertence or neglect where a party chooses not to  
4 read a contract before signing the same, unless there has been a misrepresentation by the  
5 opposing party. *See Yee v. Weiss*, 110 Nev. 657, 877 P.2d 510, 513 (1994). Sarah made  
6 no representations to David as to what was in the Decree. It is obvious that the same  
7 would have necessarily included language which was not in the MOU because a one page  
8 MOU clearly does not set forth all of the minutiae of a Decree. Further, all of the  
9 testimony supported that David and Ms. McConnell were present during the drafting of  
10 the Decree - it was not handed to them without their prior input. There was no  
11 inadvertence or excusable neglect; nor can David claim surprise where he was present  
12 during the drafting and *chose* not to read the Decree before signing.

13           Although David did not specifically reference a claim of fraud in his initial  
14 Motion, he has made the allegation in other ways throughout the case, including filing a  
15 civil case for Conspiracy and fraud against Sarah, Ms. Cooley and Ms. McConnell. **See**  
16 **Exhibit "2."** David is not entitled to Set Aside the Decree for fraud, either.

17           The elements of fraud, which a Plaintiff must prove are: 1) a false  
18 representation made by the Defendant; 2) Defendant's knowledge or belief that the  
19 representation is false (or insufficient basis for making the representation); 3) Defendant's  
20 intention to induce the Plaintiff to act or to refrain from acting in reliance upon the  
21 misrepresentation; 4) Plaintiff's justifiable reliance upon the misrepresentation; and 5)  
22 Damage to the plaintiff resulting from such reliance. *Bulbman, Inc. v. Nevada Bell*, 108  
23 Nev. 105, 111, 825 P.2d 588, 592 (1992), quoting *Lubbe v. Barba*, 91 Nev. 596, 540 P.2d  
24 115 (1975).

25           Again, Sarah made no representations to David as to the contents of the  
26 Decree, true or false. Nor was David expected to rely on any representations. He was  
27 given a copy of the Decree *for his review*. He *chose* to sign the same, apparently without  
28 reviewing it. Sarah clearly had no intention of David "relying" on any misrepresentation.



1 Nor was any reliance by David justifiable when he failed to review the Decree when  
2 offered. The simple fact is that *David's* failure to read a document before he signed it  
3 constitutes neither valid mistake nor fraud on Sarah's part.

4 David is also making the argument that the Decree must be invalidated  
5 because it does not match the MOU, and the MOU is the only valid contract. David's  
6 contention relies on a fundamental misunderstanding of the law. Nevada Law is long  
7 standing and clear - in order to have the MOU survive as an independent contract, *both*  
8 the Decree and the MOU must direct survival. *Day v. Day*, 80 Nev. 386, 395 P.2d 321  
9 (1964), is exactly on point. Therein, the Court stated: "In the case before us, only the  
10 agreement directs survival; the decree does not. We now ... hold that the survival  
11 provision of an agreement is ineffective unless the court decree specifically directs  
12 survival." *Day v. Day*, 80 Nev. 386, 389, 395 P.2d 321, 322-323 (Nev. 1964).

13 This matter is exactly the same. The language of the MOU stated, "[t]hat  
14 agreement shall be ratified by the Court, but shall not merge and shall retain its separate  
15 nature as a contract."<sup>7</sup> **See Exhibit "1."** In contrast however, the Decree states the  
16 following:

17 The Court FINDS that the parties' have resolved all other issues, including  
18 but no limited to, child support, division of assets and debts, marital waste  
19 claims, alimony and attorney's fees and costs as is memorialized by the  
20 Memorandum of Understanding, a copy of which is attached hereto as  
21 **Exhibit "B."**

22 *Stipulated Decree of Divorce, filed April 11, 2018, page 4, line 27 - page 5, line 4.*

23 There is no language directing the survival of the MOU. The MOU therefore  
24 *cannot* survive as an independent contract under Nevada Law, and cannot be held to be  
25 the enforceable agreement between the parties.

26 ...

27 <sup>7</sup> It seems clear, in the context of the paragraph that the surviving contract was intended to be the final  
28 formal agreement rather than the MOU, but ultimately the parties chose to make the Decree itself that  
final formal agreement.



1 That said, even if the Court were to find that the MOU is an independent  
2 contract not merged into the Decree, the same is still not enforceable over the Decree  
3 itself. Should the MOU and the Decree remain separate agreements they are at best  
4 preceding and superceding contracts.<sup>8</sup> Although the MOU is attached and referenced in  
5 the Decree, the Decree itself contains all of the provisions set forth in the MOU, *and*  
6 several specific provisions (not including those related to custody) which are *not* included  
7 in the MOU.

8 Parties are free to modify contracts and enter into new agreements. Where  
9 an existing contract is replaced by a subsequent agreement, the same operates as a  
10 novation and prior obligations are extinguished as a result. *See Williams v. Crusader*  
11 *Discount Corp.*, 75 Nev. 67, 334 P.2d 843 (1959).

12 For a novation to exist, there must have been an existing valid contract, the  
13 parties must agree to the new contract, the new contract extinguishes the old, and the new  
14 contract must be valid. *United Fire Ins. Co., v. McClelland*, 105 Nev. 504, 508, 780 P.2d  
15 193, 195 (1989). Whether a novation occurred is only a question of law “when the  
16 agreement and consent of the parties are unequivocal.” *Id.* It is “a question of fact if the  
17 evidence is such that reasonable persons can draw more than one conclusion. *Id.*

18 A settlement agreement is a contract. *May v. Anderson*, 121 Nev. 668, 672,  
19 119 P.3d 1254, 1257 (2005). The “contract” does not need to incorporate all of the terms,  
20 so long as reasonable certainty exists as to the underlying contract; it can be a formal or  
21 informal agreement, but the same must be signed. *Wiley v. Cook*, 94 Nev. 558, 563, 583  
22 P.2d 1076, 1079 (1978). There is no question, nor do the parties disagree, that the MOU  
23 was a contract. *However*, thereafter, the parties went to a different location and drafted  
24 a new contract. The new contract contained *all of the terms* included in the MOU, not just  
25 by reference, but by specific written inclusion in the Decree. The new contract *also*  
26

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27 <sup>8</sup> See Restatement (Second) of Contracts ss 213(1) (1981), “A binding integrated agreement discharges  
28 prior agreements to the extent that it is inconsistent with them.”



1 included additional terms, not previously addressed by either the parenting agreement or  
2 the MOU. *See Stipulated Decree of Divorce, filed April 11, 2018; C.f. Exhibit “1.”*

3 By virtue of incorporating the terms of the MOU into the Decree (as well as  
4 the language that a final formal agreement would be prepared and it would be that  
5 agreement which survived), it is apparent that the intention of the new agreement was to  
6 replace the old agreement.

7 Although specifically dealing with a loan, the *Williams* case provides clear  
8 guidance about the replacement of a contract. In that case, a husband and wife guaranteed  
9 a loan taken out by a company called Jamboree from the Defendant “Crusader.” When  
10 the terms of the loan were unmet, Jamboree agreed to a second loan with Crusader,  
11 reducing the total amount owed, and extending the time for payment. The husband, but  
12 not the wife, signed a second guaranty. The second guaranty referenced the first. Despite  
13 that fact, the Court found that the second loan operated as a novation of the first, because  
14 it was between the same parties and it was clear from the terms that it was intended as a  
15 substitution. *Williams*, 75 Nev. at 68-70.

16 It is apparent from the terms in this matter, given the incorporation of all  
17 terms of the MOU and the inclusion of *several* additional terms, that it was the intention  
18 that the Decree would replace, or subsume the MOU. Further evidence is the language  
19 included in the Decree at Page 38 line 21 - Page 39 line 2 of the Stipulated Decree, which  
20 is a clear merger clause.<sup>9</sup> It is also worth noting, that there is no other agreement which  
21 mentions the survivorship benefits.<sup>10</sup>

22 \_\_\_\_\_  
23 <sup>9</sup> “IT IS STIPULATED AND THEREFORE ORDERED, ADJUDGED AND DECREED...DAVID  
24 JOHN ROSE and SARAH JANEEN ROSE further expressly agree that this Decree of Divorce contains  
25 the entire agreement of the parties on these matters, superseding any previous agreement between them.  
26 No other agreement, statement, or promise made on or before the effective date of this Decree by or to  
either party or his or her agent or representative will be binding on the parties unless (a) made in writing  
and signed by both parties, or (b) contained in an order of a Court of competent jurisdiction.

27 <sup>10</sup> **Testimony of Ms. McConnell** Transcript Re: All Pending Motions, VI: Pg 140 line 22 - Pg 141 line  
2, Pg 165 line 8 - Pg 166 line 23;

28 **Testimony of Sarah** Transcript Re: All Pending Motions, VI: Pg 112 lines 8 - 11;



**Testimony of David** *Transcript Re: All Pending Motions*, VII: Pg 180 line 21 - Pg 181 line 5.



1 under Nevada law to find that there is either a (1) valid mistake, inadvertence, surprise  
2 or excusable neglect; or (2) fraud.

3 Therefore, Sarah requests that this court grant her Motion for a judgment  
4 pursuant to NRCP 52(c), or alternatively grant summary judgment on the matter, denying  
5 David's Motion *in toto* and affirming the Decree of Divorce. Sarah also requests  
6 permission from this Court to file a Motion pursuant to NRCP 54.

7 DATED this 12 day of February, 2021.

8 KAINEN LAW GROUP, PLLC

9  
10 By: 

11 RACHEAL H. MASTEL, ESQ.

12 Nevada Bar No. 11646

13 3303 Novat Street, Suite 200

14 Las Vegas, Nevada 89129

15 Attorney for Defendant  
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1 **AFFIDAVIT OF RACHEAL MASTEL, ESQ., IN SUPPORT DEFENDANT'S**  
2 **MOTION FOR JUDGMENT PURSUANT TO NRCP 52(c)**  
3 **OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT**

4 STATE OF NEVADA     }  
5 COUNTY OF CLARK    } ss:

6 RACHEAL MASTEL, ESQ., being first duly sworn, deposes and states that  
7 I am an attorney duly licensed to practice law in the State of Nevada, and in that capacity,  
8 I represent the Defendant, Sarah Rose, in the above-entitled action.

9 That I have read through the foregoing Motion and the facts contained  
10 therein are true to the best of my knowledge except as to those matters stated upon  
11 information and belief and as to those matters, I believe them to be true.

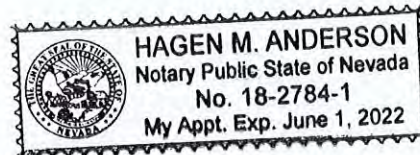
12 FURTHER AFFIANT SAYETH NAUGHT.

13   
14 RACHEAL MASTEL, ESQ.

15 SUBSCRIBED and SWORN to before me  
16 by Racheal Mastel, Esq., this 12 day  
17 of February, 2021.

18 

19 NOTARY PUBLIC in and for said  
20 County and State





**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12 day of February, 2021, I caused to be served the *Defendant's Motion for Judgment Pursuant to NRCP 52(c) or in the Alternative for Summary Judgment* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Shelley@lubritzlawoffice.com  
Daverose08@gmail.com



\_\_\_\_\_  
An Employee of  
KAINEN LAW GROUP, PLLC