

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

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4 MARSHAL WILLYCK,)
5)
6 Plaintiff,)
7 v.)
8 JERE BEERY; GENE D. SIMES,)
9)
10 Defendants.)

CASE NO.: A661766
DEPARTMENT XXIII
ORDER

I. FACTUAL AND PROCEDURAL HISTORY

The initial complaint in this case was filed May 14, 2012, alleging Defamation as well as a number of other causes of action. Since then there has been a long history of filings, motions, and decisions by this Court.

On August 19, 2014, the parties met in a settlement conference with Senior Justice Nancy Becker where they reduced the settlement terms to the record. This included various concessions by the parties as well as a retraction statement Defendants would be required to post in various locations. The transcript of the conference, filed December 29, 2014, indicates that the parties, after hearing Justice Becker's recitation of the terms, found those terms acceptable:

THE COURT: I believe that takes care of all of the matters that we discussed this morning. Mr. Beery and Mr. Simes, did I leave anything out?
MR. SIMES: No, ma'am.
...
THE COURT: So Mr. Beery, do you agree that this is essentially the terms of the settlement?
MR. BEERY: Yes. Yes, ma'am. Jere Beery agrees.
THE COURT: Mr. Simes, do you agree?

1 MR. SIMES: Yes, ma'am. And with you conducting it and being a mediator between
2 the settlement, I totally agree.

3 THE COURT: And, Mr. Willick, do you agree to those terms?

4 MR. WILLICK: Yes.

5 Settlement Conference Transcript pp. 8, 10-11. The exact content of this retraction
6 was not finalized with the other settlement terms. However, those other terms, including the
7 requirement that the retraction be formed with the mutual input of the parties, were reduced
8 to the record and thereby made enforceable under EDCR 7.50. Additionally, "a settlement
9 contract is formed when the parties have agreed to its material terms, even though the exact
10 language is finalized later." *May v. Anderson*, 121 Nev. 668, 670 (2005).

11 In the months following the agreement at the settlement conference, the parties
12 engaged in email correspondence concerning the settlement, and the retraction letter. A
13 letter written by Justice Becker, dated March 10, 2015, states that on November 3, 2014,
14 Justice Becker received correspondence from Defendants who indicated that they wished to
15 reject the settlement (despite having already accepted it). Justice Becker's letter informed
16 the Defendants that their letter improperly attempted to re-argue their case, and that the
17 agreement had already become binding. The letter also restated the settlement terms.

18 In another letter dated April 9, 2015, Justice Becker indicated that she had reviewed
19 the comments by the parties regarding the language of the settlement paperwork including
20 the retraction, and made changes consistent with them while still reflecting the settlement.
21 She attached the revised retraction and Stipulation and Order to the message, which she
22 noted she believed to be even-handed and to accurately reflect the parties' agreement.

23 On June 2, 2015, this court heard Plaintiff's Motion for Entry of Order, and the
24 Court signed in open court an order ("the First Order") intended to reflect the settlement
25 terms between the parties. It had been prepared by Plaintiff pursuant to EDCR 7.21 and
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1 submitted to the Court. A comparison of the First Order with the attachments to Justice
2 Becker's letter and the transcript of the settlement conference shows that it did in fact
3 contain the proper settlement terms. However, it was set aside when this Court later
4 discovered the Motion for Entry of Order had no Proof of Service.
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6 On August 25, 2015, this Court heard Plaintiff's second Motion for Entry of Order.
7 At this hearing, another order ("the Second Order"), which was again intended to reflect the
8 settlement terms between the parties, was provided by Plaintiff (pursuant to EDCR 7.21) and
9 signed in open court after Defendants' Court Call was terminated for having conducted
10 themselves during the hearing in a disorderly and inappropriate manner.
11

12 Thereafter, there were no hearings in the case until October 20, 2015. One of the
13 matters set for that day and ultimately heard on Chambers Calendar was the Defendant's
14 Amended Motion to Stay Order of 25 August 2015. That motion did not simply challenge
15 the language of the specific retraction that was attached to the Second Order. Rather, similar
16 to Justice Becker's description of the Defendants' November 3, 2014, correspondence, the
17 Defendant challenged the validity of the entire August 19, 2014, settlement proceedings as
18 well as the actions of Senior Justice Nancy Becker.
19

20 However, because the only matter on this Court's civil calendar, after Defendants'
21 motions were placed on Chambers calendar for further review, was Plaintiff's Motion for
22 Order to Show Cause, the Court proceeded on that matter. During the hearing the Court
23 inquired of Defendants why they had not complied with the Second Order, which had been
24 signed and validly entered, although the retraction was not the correct one. Importantly, the
25 Court's inquiry at that hearing did not solely relate to the retraction, but also as to the
26 aspects of the Second Order which did in fact properly reflect the parties' agreement.
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1 In particular, the Court asked Defendants to explain why they had not taken down
2 their articles from various websites where Plaintiff had found the articles still posted and
3 visible. Defendants indicated during the hearing that all of the webmasters of the multiple
4 sites that still hosted Defendants' articles refused to take them down upon the Defendants'
5 request, and represented to the Court that they would acquire proof that they had tried and
6 been unable to comply. The Court continued the hearing to give the Defendants four weeks
7 of additional time to compile that evidence and show they were not in violation of the
8 Court's order for failing to take down the articles.
9

10 However, when reviewing the matters on chambers calendar, this Court discovered
11 that although other aspects of the Second Order were accurate, the retraction attached to the
12 Second Order was *not the proper retraction and not the same as the retraction attached to the*
13 *First Order.* As a result, the Second Order was also set aside by the Findings of Fact,
14 Conclusions of Law and Order filed by the Court on November 5, 2015. Importantly,
15 however, this Court has never found or ordered that the August 19, 2014, settlement was in
16 any way invalid or non-binding. To the contrary, in the Findings of Fact, Conclusions of
17 Law and Order filed on October 9, 2015, this Court specifically found that the terms of the
18 settlement agreement as entered on the record at the August 19, 2014, settlement conference
19 *are binding on the parties pursuant to EDCR 7.50, despite that the exact language of the*
20 *retraction had not been finalized at the settlement conference itself.*
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22 The Court in a contemporaneous *sua sponte* order fixed the terms of the settlement
23 as evidenced by the transcript of the conference as well as the correspondence from Justice
24 Becker into an order so the parties could enforce the agreement with this Court.
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II. PLAINTIFF'S AND DEFENDANTS' CURRENT MOTIONS

Since the October 20, 2015, hearing, Plaintiff and Defendants have each filed numerous motions, although not all of them are so labeled, which are currently set for hearing on February 23 and March 15, 2016. Those motions are as follows:

- Defendants' "Motion to Reconsider Order of Stipulation by Judge Becker of August 19, 2014," filed October 14, 2015;
- Defendants' "Motion to Dismiss" filed November 16, 2015;
- Defendants' "Fraud and Perjury Before the Court and Motion to Dismiss" filed November 25, 2015 (two identical motions, one by each Defendant);
- Plaintiff's Opposition to each of the above (including an identical opposition to each of the Defendants' identical "Fraud and Perjury" motions) and Counter motions for Fees, Costs, and Sanctions;
- Defendants' three Motions to Strike concerning various filings by Plaintiff, and an errata to one such motion.
- Plaintiff's "Stock Response" and Counter motion
- Defendants' two Objections and Motions to Strike Plaintiff's "Stock Response"

The Court has the power to decide motions without oral argument. EDCR 2.23(c).

Accordingly, having reviewed and considered all matters, arguments, and documents on file herein, the Court hereby makes the following Findings and Order.

1. Defendants' Motion to Reconsider Order of Stipulation by Judge Becker

This motion is styled as a "Motion to Reconsider." Such motions are generally used to ask the Court to reconsider an order. However, other than a minute order which noted the parties had settled (as reflected by the transcript), Senior Justice Nancy Becker did not enter an order; rather, she reduced the terms of the settlement to the record, at which point they became binding on all parties. Therefore, there is no "order" by Justice Becker to reconsider. To the extent the Defendants in this motion are attempting to argue that the settlement itself is invalid or in any way non-binding, COURT FINDS Defendants' motion has no merit. This Court has already entered the settlement terms in its contemporaneous order, including the proper retraction. There is neither any need nor any grounds for an alteration. Therefore,

1 **COURT HEREBY ORDERS** Defendants' Motion to Reconsider Order of
2 Stipulation by Judge Becker of August 19, 2014, is DENIED.

3 Defendants have filed a number of past motions in which, sometimes in addition to
4 other arguments, they challenge and attempt to reject the terms of the parties' settlement.
5 Such arguments have been similar or identical in each, and have been consistently rejected
6 by this Court. Although it is true that the August 25, 2015, order contained the incorrect
7 retraction, Defendants' repetitive and successive arguments do not simply challenge the
8 retraction. Instead, they challenge the validity and binding nature of the overall settlement.
9 As explained above, the terms are binding as now entered by this Court's contemporaneous
10 order. Any further challenges to this Court's orders concerning the validity of the settlement
11 should be taken on appeal. Therefore, to preserve and promote judicial economy,
12

13 **COURT FURTHER ORDERS** insofar as any future motions challenge the validity
14 of the settlement, and contain arguments which are the same in substance as those which this
15 Court has previously considered and rejected, such motions will be denied without hearing
16 and sanctions may be imposed pursuant to EDCR 7.60 and NRCP 11.

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18 **2. Defendants' Motion to Dismiss**

19 Defendants' "Motion to Dismiss" attempts to point out alleged ethical violations by
20 the Plaintiff and the Court, and apparently attempts to use these alleged violations to ask the
21 Court to sanction the Plaintiff by dismissing the case. Specifically, Defendants "Motion to
22 Dismiss" alleges as follows:
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- 24 1. The Court had not been reviewing the Defendants' motions
- 25 2. The Plaintiff had been submitting "fraudulent documents"
- 26 3. The Court had been "taking the Plaintiff's word as being Gospel"
- 27 4. By posting the incorrect retraction, Plaintiff committed slander upon Defendants
- 28 5. Plaintiff lied when he said postings could not be removed from his website, and
 therefore should be required to remove his "derogatory" articles

1 Defendants also imply that Plaintiff hacked a website to place their article there, to
2 get them in trouble with the Court. As a result of the above allegations, Defendants also
3 demand that this Court re-review all prior orders written by Plaintiff to “ensure they
4 correctly reflect the Order as issues [sic] by the Court.”
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6 With respect to each of the allegations, it is important to recognize the actual nature
7 of this Court’s Findings of Fact, Conclusions of Law and Order, filed November 5, 2015.
8 This Court did not find that Plaintiffs had intentionally submitted an incorrect retraction.
9 What this Court did find was simply that the retraction attached to the August 25, 2015,
10 order was the wrong retraction. Perhaps most importantly, *this Court did not and has never*
11 *found or ordered that the August 19, 2014, settlement was in any way invalid or non-*
12 *binding*, as Defendants appear to believe it has. As explained above, it is in fact valid and
13 binding pursuant to EDCR 7.50 and the *May* case. In light of this explanation, the Court will
14 now consider the above allegations.
15

16 Allegations #1 and 3 amount to a claim that the Court had not been reviewing
17 Defendants’ motions, and had instead been believing anything said by Plaintiff. To the
18 contrary, the Court has in fact reviewed all filings as they became relevant. However, the
19 Court does not always agree with everything argued by any particular party. Here, the Court
20 has repeatedly advised Defendants that the settlement itself is valid and binding, and no part
21 of the Court’s November 5, 2015, order has changed that. The settlement may not have
22 specified the exact language of the retraction on the day of the conference, but part (not all)
23 of the binding agreement made on that day was that the parties would work with Justice
24 Becker to come up with a retraction later. As a result, this Court has had to deny the
25 numerous attempts by the Defendants to move this Court to find *the settlement itself* invalid
26 and non-binding. But, as explained above, since the entry of the August 25, 2015, order, this
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1 Court has not made any additional ruling concerning the retraction itself, other than
2 determining it to have been incorrect.

3 Additionally, the incorrect retraction was not submitted to the Court numerous times,
4 as alleged by Defendants. The first time any retraction was submitted to the Court was at the
5 hearing on Plaintiff's first Motion for Entry of Order. The Court thereby signed an order that
6 had the correct retraction attached. As explained above, that order, filed June 2, 2015, was
7 set aside for a procedural reason.

8 Allegation #2 is a claim that Plaintiff had been submitting fraudulent documents to
9 the Court. Defendants fail to explain which documents that the Plaintiff has submitted to the
10 Court, other than the incorrect retraction, they think is fraudulent. Instead they make the
11 logical leap from the fact that the retraction attached to the August 25, 2015, order was
12 incorrect, to the conclusion that Plaintiff has submitted many incorrect documents, and has
13 done so each time on purpose. Based on this, they demand the Court go back through all
14 orders which Plaintiff has submitted in the case to check them for accuracy.

15 To begin, it should be noted that EDCR 7.21 in fact *requires* the prevailing party
16 who obtains any order to "furnish the form of the same to the clerk or judge in charge of the
17 court within 10 days after counsel is notified of the ruling." Therefore, Plaintiff is not acting
18 unethically by submitting such orders to the Court.

19 Next, re-reviewing all orders so submitted by the Plaintiff would be a waste of the
20 Court's time. This Court reviewed each order as it was submitted. The August 25, 2015,
21 order in question was submitted in open Court, after Defendants had been disconnected from
22 CourtCall for conducting themselves inappropriately. This Court believed it to have been the
23 same as the order entered on June 2, 2015, because both Motions for Entry of Order were
24 intended to accomplish the same goal: to enter the terms of the settlement. This Court
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1 therefore has no reason to believe that any past orders were incorrect, other than those
2 already set aside. Each of Defendants' past motions which challenged one of this Court's
3 orders and was denied, was denied for good reason. Therefore, there is no basis to demand
4 this Court re-review all orders submitted in the almost-four-year lifespan of this case.
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6 With respect to allegation #4, the legal definition of "slander" is not met here and
7 even if it were, it would not be a basis to dismiss the case. As to the implications that
8 Plaintiff caused a website to be hacked, Defendants' motion does not include any evidence.

9 Allegation #5 is that Plaintiff lied to Justice Becker during the settlement conference
10 when he said he could not remove anything from his articles on his website. Defendants
11 believe this was a lie because he was able to take down the incorrect retraction from his
12 website. This implies they also appear to believe Plaintiff's statement during the settlement
13 conference was that he was literally unable to remove any of his articles from his website.
14 What actually happened was that Defendant first asked if Plaintiff's articles would remain
15 on the internet. Justice Becker informed defendant that they would in fact remain online.
16

17 At that point, Defendant indicated he wanted Plaintiff to "adjust" his articles. When
18 Justice Becker asked Plaintiff if he would consider doing so, he replied that the articles are
19 "not adjustable in so far as they're a permanent record of what was previously stated." It was
20 Defendants' responsibility during the settlement conference to continue to discuss this with
21 Plaintiff and Justice Becker. That did not occur. Instead, Justice Becker proposed that the
22 retraction be attached to Plaintiff's articles so if anyone came across them, they would know
23 about Plaintiff's apology contained therein. Upon asking Defendants if that was acceptable,
24 both immediately agreed. Settlement Conference Transcript, p. 10.
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1 As a result of the above, this Court declines to sanction Plaintiff or dismiss the case.
2 Therefore, **COURT FURTHER ORDERS** both of Defendants' "Fraud and Perjury Before
3 the Court and Motion to Dismiss", filed November 25, 2015, are DENIED.
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5 **3. Plaintiff's Countermotions for Attorney's Fees, Costs, and Sanctions**

6 Plaintiffs are correct in that the Court will consider sanctions for continued filing of
7 duplicitous, meritless motions. However, an award of sanctions is discretionary. EDCR 7.60,
8 NRCPC 11. This Court declines to impose any sanctions at this time. Therefore,

9 **COURT FURTHER ORDERS** Plaintiff's Countermotions, filed November 30,
10 December 10, and December 16, 2015, are DENIED.

11 **4. Defendants' Motions to Strike**

12 It should first be clarified that Defendants' "errata," filed December 17, 2015, only
13 corrects a typo in their December 16, 2015, Motion to Strike. It was mistakenly calendared
14 as a separate matter because Defendants included an additional notice of motion; however,
15 other than fixing that typo, it appears to be identical to the original motion.
16

17 Defendants' first Motion to Strike, filed on December 16, 2015, asks this Court to
18 "strike" Plaintiff's opposition and countermotion to Defendants' Motion to Reconsider,
19 which was filed October 14, 2015. There is no filing by Plaintiff which calls itself an
20 opposition to Defendants' motion to reconsider. However, Plaintiff's "Opposition to
21 Defendant Jere Beery's 'Motion to Dismiss' and Countermotion for Fees, Costs, and
22 Sanctions," filed November 30, 2015, appears to oppose both Defendants' Motion to
23 Dismiss and their earlier Motion to Reconsider. As such, this Court will assume this is the
24 subject of Defendants first Motion to Strike (and errata thereto).
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26 Defendants ask this Court to strike that opposition and countermotion because it was
27 not properly served. Additionally, according to Defendants, there was no official Clerk of
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1 the Court stamp so there was no way to determine when the motion was filed with the Court.
2 This Court first notes the opposition and countermotion was filed on November 30, 2015.
3 As to service, the opposition and countermotion includes on page six a certificate of service
4 indicating the motion was served on November 30, 2015. Moreover, Defendants in their
5 Motion to Strike effectively admitted to being in receipt of a copy because on pages one and
6 two of their motion they asserted that the motion had no file stamp. The motion as filed in
7 the case is file stamped, so Defendants must have received a copy without it. (There is no
8 rule requiring that a copy of a filing served on an opposing party via mail be file stamped.)
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10 Defendants also argue that Plaintiff's motion does not comply with EDCR 2.20(c),
11 and should be stricken on that basis. They argue that Plaintiff offers no support for his
12 motion, as required by that rule, and request sanctions for failure to comply. EDCR 2.20(c)
13 does not require the Court to strike a noncompliant filing, but rather gives the Court the
14 discretion to construe noncompliance as an admission that the filing is not meritorious. This
15 Court notes that Plaintiffs did include a legal basis for their opposition and countermotion,
16 namely EDCR 2.20 and 7.60. Regardless, Defendants' argument here is moot because as
17 explained above the Court declines to impose sanctions at this time. Therefore,
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20 **COURT FURTHER ORDERS** Defendants' "Motion to Strike Plaintiff's
21 Opposition and Countermotion to Mr. Simes' Motion to Reconsideration [sic] of Order from
22 October 20, 2015, Hearing," filed December 16, 2015, is DENIED.

23 **COURT FURTHER ORDERS** Defendants' Errata to the above Motion to Strike,
24 filed December 17, 2015, mistakenly calendared as a separate matter, is DENIED.

25 Defendants' next Motion to Strike asks this Court to strike Plaintiff's Opposition and
26 Countermotion to Defendants' Fraud and Perjury Before the Court and Motion to Dismiss.
27 This motion begins by misconstruing the actual nature and effect of this Court's Findings of
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1 Fact, Conclusions of Law and Order filed on November 5, 2015. This has already been
2 clarified and explained above: the November 5, 2015, order did not find that the settlement
3 itself was invalid.

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5 The second Motion to Strike also alleges that there was not proper service. However,
6 again, there is a Certificate of Service on page seven of the Plaintiff's opposition and
7 counter-motion, indicating that the motion was served on December 10, 2015. Additionally,
8 Defendants again admit to receiving it on page 4 of their Motion to Strike when they note
9 that they received a copy "without the signature of the Clerk of the Court" (which, once
10 again, is unnecessary). The motion then goes on to once again argue for sanctions for
11 Plaintiff not complying with EDCR 2.20(c). The discussion of Defendants' EDCR 2.20
12 argument above also applies here. Therefore,

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14 **COURT FURTHER ORDERS** Defendants' "Motion to Strike Plaintiff's
15 Opposition to Defendant Gene Simes Fraud and Perjury Before the Court and Motion to
16 Dismiss," filed December 17, 2015, is DENIED.

17 In their third Motion to Strike, filed December 23, 2015, Defendants again ask this
18 Court to "strike" Plaintiff's filings, this time to each of the abovementioned Plaintiffs'
19 motions. It appears the above motions were submitted by Defendant Simes, whereas this
20 motion was submitted by Defendant Beery. This Motion is substantively the same as those
21 submitted by Defendant Simes. Therefore, an analogous analysis applies here. Accordingly,

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23 **COURT FURTHER ORDERS** Defendants' Motion to Strike . . . filed December
24 23, 2015, is DENIED.

25 **5. Plaintiff's "Stock Response"**

26 This opposition and counter-motion, filed January 20, 2016, appears to be Plaintiff's
27 attempt to ensure each of Defendants' motions are opposed, without having to write a
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1 separate opposition for each. The countermotion requests sanctions for the same reasons as
2 in the Plaintiff's countermotions discussed above. Imposition of sanctions is discretionary,
3 and the Court declines to do so at this time. Therefore,
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5 **COURT FURTHER ORDERS** the countermotion contained within Plaintiff's
6 "Stock Response," filed January 20, 2016, is DENIED.

7 **6. Defendants' Final Motions to Strike**

8 Defendants filed two Motions to Strike directed at Plaintiff's "Stock Response." The
9 motions appear to be identical except that each simply includes one Defendant's name
10 instead of the other. Therefore, the Court will review both filings as one motion.
11

12 In this motion, Defendants allege that Plaintiff's "Stock Response" violates the
13 Nevada Rules of Civil Procedure because "it is not [a filing] that has approval by the
14 NEVADA RULES OF CIVIL PROCEDURE." (Emphasis in original.) The Defendants
15 assert that Plaintiff "thinks he can **DEVELOP** his own rules of civil procedure." (Emphasis
16 in original.) Defendants further argue that the motion was lacking a Notice of Motion and a
17 Certificate of Service stamped by the Clark County Court Clerk.
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19 The title of Plaintiff's "stock response" is presumably to inform the reader that the
20 content of the motion will be the same each time it is filed in response to additional motions.
21 EDCR 2.20 allows for the filing of oppositions (which is the proper way to oppose a motion,
22 rather than a motion to strike), and also allows the inclusion of a countermotion. Regardless
23 of its title, the "stock response" is merely that: an opposition and countermotion. When it
24 states the Plaintiff "developed" the stock response, it is stating that he has constructed a
25 document, the form of which will be used multiple times. As to the lack of a notice of
26 motion, a countermotion within an opposition does not need to include a notice of motion,
27 because it takes place at the same hearing as the motion being opposed. Additionally,
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1 contrary to Defendants' assertion, the opposition does include a Certificate of Service
2 indicating that it was served on January 20, 2016, the same day it was filed.

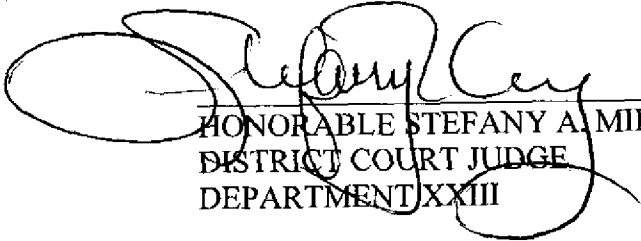
3 The motion continues to once again argue that the settlement itself is invalid and
4 non-binding, and argues that Senior Justice Becker "bamboozled" Defendants. Additionally,
5 Defendants assert that "there was no way [Defendants] would have agreed to the ridiculous
6 terms drafted by Judge Becker." As explained above, the transcript of the hearing indicates
7 that Defendants did in fact so agree, during the hearing itself and therefore on the record.
8 Also as explained above, the settlement *is* valid and binding upon the parties.
9

10 Finally, this motion argues that Plaintiff's "stock response" violates EDCR 2.20 and
11 that sanctions should be awarded based on EDCR 7.60. The same analysis that applies to
12 Defendants' other Motions to Strike also applies here; the countermotion in Plaintiff's
13 "stock response" is based on legal grounds (EDCR 2.20 and 7.60), despite having been
14 denied. Additionally, this Motion to Strike is also moot because that countermotion was
15 denied and no monetary sanctions are being imposed on Defendants at this time. Therefore,
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17 **COURT FURTHER ORDERS** Defendants' two Motions to Strike, each filed
18 January 26, 2016, are DENIED.

19 Additionally, pursuant to EDCR 2.23(d), **COURT FURTHER ORDERS** the
20 hearings for each of the above motions, set for February 23 and March 15, 2016, OFF
21 CALENDAR.
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23 Dated this 2nd day of February, 2016.
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26 HONORABLE STEFANY A. MILEY
27 DISTRICT COURT JUDGE
28 DEPARTMENT XXIII

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CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this Findings Of Fact, Conclusions Of Law and Order was electronically served and/or placed in the attorney's folders maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows: Marshal Willick, Esq., Jere Beery, at 134 Savannah Ridge Trail, Demorest, GA 30535 and to Gene D. Simes at 1700 Waterford Road, Walworth, NY 14568.

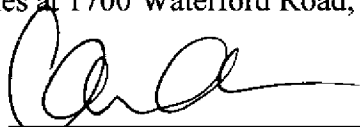
By: 
Carmen Alper
Judicial Executive Assistant

EXHIBIT 1

Supreme Court of Nevada
SENIOR JUDGE PROGRAM

JUSTICE MICHAEL CHERRY
Program Supervisor

NANCY BECKER
Senior Judge



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Marshalwillick@willicklawgroup.com

March 10, 2015

Dear Mr. Beery and Mr. Simes:

I received your correspondence of November 3, 2014 indicating you were rejecting the settlement that was reached in this case on August 19, 2014. Before responding to your letter, I ordered a transcript of the settlement terms which were put on the record and agreed to by all parties on that date. That transcript was prepared and filed on December 29, 2014. I have attached a copy of the transcript for your benefit.

First, please understand that the documents sent to you were not a settlement proposal. They were documents to finalize the settlement that was reached on August 19, 2014. Under Nevada law, a settlement that is placed on the record and agreed to by the parties is a binding settlement and enforceable. EDCR 7.50, Power Co. v. Henry, 321 P.3rd 858, 861, 863 (2014). The terms of the settlement were stated on the record and both of you acknowledged you agreed with the terms.

The terms of the settlement, as reflected by the record, are:

1. A mutual retraction document would be issued by the parties.
2. The parties would post the retraction on the respective websites that were originally used to disseminate the various articles subject to the lawsuit, including but not limited to the websites listed in the transcript. The retraction will be posted for a period of twelve months from the entry of the permanent injunction.
3. Each party would use its best efforts to disseminate the retraction to the same persons who originally received copies of the articles by any other form of communication, such as e-mail, postal mail, etc.
4. The parties would remove from their websites the previous defamatory and offensive postings and use their best efforts to see that the information is removed from any other internet distribution points.
5. A permanent injunction would issue against Mr. Beery and Mr. Simes barring them from knowingly being within 1,000 feet of Mr. Willick, the offices of Willick Law Group or any employee of the Willick Law Group and from having any contact with Mr. Willick, the Willick Law Group or any employee of the Willick Law Group after the settlement is concluded.
6. Mr. Beery and Mr. Simes would be permanently enjoined from writing and distributing by any means defamatory statements involving Mr. Willick, the offices of Willick Law Group or any employee of the Willick Law Group.
7. Jurisdiction over the parties and the subject matter of the lawsuit would remain in Clark County, Nevada.
8. Each side will bear their own attorneys' fees and costs.
9. Aside from the entry of a permanent injunction, all other claims, counter-claims or cross-claims between the parties will be dismissed with prejudice.
10. The terms of the settlement shall be confidential and may not be discussed or shared with anyone but the parties to the settlement, except that each party may disclose the nature of the settlement to any tax preparer if required.
11. No monetary award or sanction for prior conduct of any party shall be imposed.
12. At the request of Mr. Beery and Mr. Simes, Mr. Willick agreed that upon the posting of the retraction and entry of the permanent injunction, he would contact a defaulted defendant, Mr. McGowan about vacating the default judgment and dismissing the case against Mr. McGowan.
13. The retraction will include the following:
 - a. A brief recitation of the nature of the dispute.
 - b. A statement from Willick that he did not intend to offend military personnel or veterans' and apologize for using language that had that result and will commit to being more sensitive to such language in any future articles about veterans' benefits.
 - c. A list of statements published by Mr. Beery and Mr. Simes – the list being taken from the sample retraction admitted as Exhibit 1 at the hearing.

- d. An acknowledgement that statements were made without specific factual knowledge or investigation and contained inaccurate information and, when taken together were misleading.
- e. A statement that neither Mr. Beery nor Mr. Simes intended to publish inaccurate information or harm Mr. Willick, the Willick Law Group or any employee of the Willick Law Group and that they regret any difficulties that have arisen as a result of the statements.
- f. A statement that Mr. Beery and Mr. Simes encouraged individuals to file randomly complaints against Mr. Willick, and/or Willick Law Group and/or employees of the Willick Law Group with the Nevada State Bar and an acknowledgement that the Nevada State Bar found no ethical violations and dismissed the complaints.

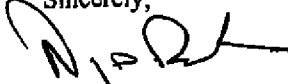
The draft retraction statement and other documents forwarded to you for comment are intended to reflect the terms of the settlement agreement. The majority of your November 3, 2014 letter does not address changes to the language, but rather reargues your case. This is not a proper response.

Because you are acting in proper person, I will have my Judicial Executive Assistant, Ileen Spoor, set up a conference call with the two of you to discuss any objections you have to the specific language. She will schedule it for March or early April to give Mr. Simes time to have this letter and the transcript transcribed to a medium that is accessible to him.

This will be your last chance to provide input on the language of the retraction, the permanent injunction and the dismissal documents. Thereafter I will draft a final version of the documents and submit them to both parties. If you fail to execute the documents, Mr. Willick will then be free to file whatever motions he believes are appropriate.

As I discussed in length with both parties before the settlement was placed on the record, I believe this is a reasonable settlement taking into consideration the prior rulings of the district court, the facts revealed by discovery, the nature of the disputed statements and the law of defamation. I hope the two of you will work with me so that the parties can put this behind them and move on.

Sincerely,



Nancy A. Becker
Senior District Judge

NAB:IS

Enclosures: (1)

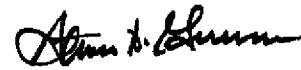
CC: Marshall Willick

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1 CASE NO. A661766

2 DEPT NO. XXIII

3 DISTRICT COURT



CLERK OF THE COURT

4 CLARK COUNTY, NEVADA

5

6 MARSHAL WILLYCK,)

7 Plaintiff,)

8 vs.)

9 JERE BEERY, GENE D.)

SIMES,)

10)

Defendant.)

11)

REPORTER'S TRANSCRIPT
OF
SETTLEMENT CONFERENCE
AGREEMENT

12

BEFORE THE HONORABLE NANCY BECKER,

13

SENIOR DISTRICT COURT JUDGE

14

AUGUST 19, 2014

15

9:00 A.M.

16

17

18 APPEARANCES:

19 For the Plaintiff: Marshal Willick, Esq.

20

21 For the Defendants: Jere Beery, Pro Se
Gene D. Simes, Pro Se
22 (Telephonically)

23

24

25 Reported by: JoAnn Melendez, CCR No. 370

1 LAS VEGAS, CLARK COUNTY, NV, AUG. 19, 2014

2 9:00 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: All right. Mr. Beery, Mr.
7 Simes, we are now present in the courtroom. And Mr.
8 Willick is also present. And we also have the court
9 reporter who's going to take down the settlement.

10 And so I'm going to go ahead and
11 state the terms of the settlement. And then I will
12 ask if you and Mr. Beery agree to it and I will also
13 ask Mr. Willick if he agrees to it.

14 MR. BEERY: Thank you.

15 THE COURT: Essentially the parties have
16 agreed that they will settle this case through the
17 posting and publication of a document that I'm going
18 to call a retraction document because that's the
19 technical term in a defamation case.

20 And that in addition to the posting
21 of that document, a permanent injunction will be
22 entered that would prohibit Mr. Beery and Mr. Simes
23 from coming within, intentionally coming within a
24 thousand feet of Mr. Willick, the Willick Law Group
25 office, or any of the employees of Mr. Willick.

1 And that the -- essentially the
2 document that I'm going to call the retraction
3 document, it will begin with a brief recitation that
4 a dispute arose between the defendants and the
5 plaintiff as a result of the fact that plaintiff had
6 published some articles dealing with how veterans
7 disability benefits should be treated in terms of an
8 income stream in divorce proceedings.

9 In making that statement, the
10 defendant and the organizations that Mr. Beery and
11 Mr. Simes are affiliated with disagree vehemently
12 that point of view and they expressed their
13 disagreement in some internet articles and postings.

14 The plaintiff wrote another article
15 which did not specifically reference any particular
16 group but indicated his disagreement with the
17 group's response. And in doing so, he used some
18 terminology that Mr. Beery and Mr. Simes and other
19 veterans found offensive in which they found was
20 disparaging to the service, typically the disabled
21 veterans who had served in combat zones had given to
22 their country.

23 Mr. Willick acknowledges that was
24 never his intent, and the agreement will note that,
25 that he never intended to do that and that he will

1 take into consideration in the future when he writes
2 articles that aspect because he does not wish to
3 unintentionally offend any of our veterans who've
4 been disabled in the service of their country.

5 The parties will agree that the
6 jurisdiction in this case remains with the District
7 Court of Clark County and the department of Judge
8 Miley or whatever judge is sitting in that
9 department, and that there is personal jurisdiction
10 of the court over the defendants.

11 In addition, once the agreement has
12 been posted, Mr. Beery and Mr. Simes and anyone
13 working for them would be enjoined from
14 communicating with or contacting Mr. Willick, the
15 Willick Law Group, or any employee of the law group
16 whether that's in person or by mail or telephone or
17 email.

18 And obviously there may be
19 circumstances where people run into each other
20 occasionally, unintentionally. Everybody
21 understands that's not what we're talking about in
22 these instances.

23 Mr. Beery indicates -- or the
24 defendants indicate that they will be enjoined from
25 writing or posting or displaying anymore of the

1 types of writings that are the -- under dispute here
2 which we'll call defamatory writings, because that's
3 technically what you call them under the law, about
4 Marshal Willick or the Willick Law Group or any
5 employee of the Willick Law Group.

6 And to the extent that you can,
7 you'll remove the previous articles that were posted
8 from your particular websites. And the retraction
9 notice will be posted on the same types of websites
10 in which the original articles appeared, which is
11 OFFE American Promise, Area 5301, Jere Beery or
12 jerebeery.com and Veterans Today, and that the
13 posting of the notice will continue for 12 months.

14 Both sides agree that once this is
15 under affect they're not going to talk about it
16 amongst themselves or anyone else or do postings or
17 blogs or things like that. To the extent that they
18 need it for tax purposes or something like that,
19 they can obviously discuss it for that purposes.

20 There will be no monetary judgment
21 and no judicial sanctions for any previous conduct.

22 Each side will bear their own costs,
23 attorney's fees and/or costs as a result of the
24 settlement.

25 And the retraction document itself,

1 I will use the template provided to me by Mr.
2 Willick. And I will rephrase it because there's an
3 acknowledgment that Mr. Beery and Mr. Simes don't
4 want to make a statement that says that Mr. Willick
5 has never done something because they don't know
6 whether he has or he hasn't. They are willing,
7 however, to make an affirmative statement similar to
8 the retraction that's been previously presented to
9 them.

10 And that will be in Exhibit 1 to
11 this hearing that says that when they made the
12 specific statements that are listed in that
13 retraction, they did not have specific factual
14 knowledge with regard to those statements and
15 therefore the statements were inaccurate and
16 misleading.

17 And then there's a list of the
18 statements that we've gone over. And they're
19 essentially the same statements that are listed in
20 the complaint and have been discussed between the
21 parties.

22 The defendants will acknowledge that
23 they encouraged individuals to make some complaints
24 before the Nevada Bar Association. And that when
25 they did so, while they, they did not have specific

1 evidence of illegal conduct and they now acknowledge
2 that the state bar association has found that Mr.
3 Willick's conduct and fee agreements does not
4 constitute a violation of the state bar code.

5 And the defendants will -- the
6 statement will contain something to the effect that
7 when they made the statements without factual basis,
8 they were not intending to personally harm Mr.
9 Willick, his practice or his employees and that they
10 are sorry for any issues that arose out of those
11 statements. And so that would be included in the
12 redactions.

13 And finally, that the redaction
14 would indicate that the parties are publishing it
15 with the specific intent of indicating that the
16 statements that were made do not have a factual
17 basis and that the parties intend that the
18 settlement resolve the issue and that such
19 statements will not be made in the future.

20 And that's essentially what the
21 release would encompass. The specific language will
22 be drafted by me, submitted to all parties for their
23 approval, but that's the essence of what the
24 document would say.

25 In addition, there is an individual,

1 Mr. McCow -- excuse me, Mr. McCowan, who currently
2 has a default entered against him. Mr. Willick has
3 had some communication from Mr. McCowan. He has not
4 yet responded to that communication. Mr. Beery and
5 Mr. Simes have asked could Mr. McCowan be a part of
6 this settlement. Mr. Willick has indicated that he
7 will let Mr. McCowan know that yes, he can be a part
8 of this settlement, that the default judgment could
9 be vacated if he wishes to be a part of the
10 settlement and that that communication will occur
11 once we have a more definitive document in terms
12 that Mr. McCowan could then read over, so that he
13 would fully understand what the negotiations are.

14 I believe that takes care of all of
15 the matters that we discussed this morning.

16 Mr. Beery and Mr. Simes, did I leave
17 anything out?

18 MR. SIMES: No, ma'am. This is Mr.
19 Simes. One thing that I would wholly agree and hold
20 that hallow is that we start -- I apologize, that we
21 apologize as veterans that this connection and that
22 as it shows that Mr. Willick has an apologized to
23 the men and women that have served and those
24 veterans that are, that are home now and disabled
25 from the war and I can appreciate everything that

1 you have put forward to and also what Mr. Willick is
2 willing to do.

3 THE COURT: So Mr. Simes --

4 MR. BEERY: And I --

5 THE COURT: Go ahead, Mr. Beery.

6 MR. BEERY: Yes. One question. Will Mr.
7 Willick's legal notes still remain on the internet?

8 THE COURT: His articles will remain on
9 the internet, but I believe he has changed the
10 article. He has deleted the majority of those
11 articles for -- I think that -- I thought that some
12 of them were no longer posted, but no, his articles
13 will remain on the internet.

14 But are you asking that he delete a
15 little bit of the language that you found offensive
16 or --

17 MR. BEERY: Well, I think that it's only
18 fair that we both, you know, put down our guns. And
19 I would hate for any veteran to come across that --
20 those statements in any form that were directed
21 basically at us, and I would feel guilty about that
22 myself if Mr. Willick doesn't adjust them.

23 It's a humble request that I make,
24 Your Honor.

25 THE COURT: Mr. Willick, are you willing

1 to work --

2 MR. WILLICK: They're not --

3 THE COURT: -- with me --

4 MR. WILLICK: They're not adjustable in
5 so far as they're a permanent record of what was
6 previously stated; however, I will take the text of
7 whatever we come up with here today and make sure
8 that it is crosslinked, so that anybody that runs
9 across any of those will find what we did here
10 today.

11 THE COURT: Is that right, Mr. Beery,
12 we'll attach to those articles the same statement
13 that would attach to your articles, so that if
14 anybody runs across one, they will know about Mr.
15 Willick's apology from the agreement? Is that okay?

16 MR. SIMES: Thank you, Mr. Willick.

17 MR. BEERY: Yes. I, I appreciate that.
18 And I had another question, but I've forgotten it.
19 But go ahead, Your Honor. I apologize for
20 interrupting.

21 THE COURT: So Mr. Beery, do you agree
22 that this is essentially the terms of the
23 settlement?

24 MR. BEERY: Yes. Yes, ma'am. Jere Beery
25 agrees.

1 THE COURT: Mr. Simes, do you agree?

2 MR. SIMES: Yes, ma'am. And with you
3 conducting it and being a mediator between the
4 settlement, I totally agree.

5 THE COURT: And, Mr. Willick, do you
6 agree to those terms?

7 MR. WILLICK: Yes.

8 THE COURT: Is there anything that you
9 think I left out.

10 MR. WILLICK: Only, Your Honor, that you
11 indicated that a transmission would be made to the
12 district court indicating that the currently pending
13 dates set for hearing should be vacated.

14 THE COURT: That is correct. And I will
15 let the district court know that.

16 In addition, the counterclaim would
17 be dismissed. Mr. Beery did clarify that in
18 chambers and I just didn't mention it here.

19 MR. BEERY: Yes, ma'am. And I need to
20 let the court -- I need to let the court know that
21 my website transpired or went out, both of them,
22 Jere Beery and Area 5301. And that's been down off
23 the internet. I can't afford to keep them up. So
24 I'm not even on the internet for those sites
25 anymore. Haven't been for over a year.

1 THE COURT: Okay. And what you're gonna
2 do is just use your best efforts to ensure that the
3 dissemination is done in a manner that would get to
4 the same audience that the original dissemination
5 was. Everybody understands that there is no way to
6 completely remove something from the internet.
7 You're just gonna use your best efforts.

8 Correct, Mr. Willick?

9 MR. WILLICK: Yes.

10 THE COURT: All right. With that in mind
11 then, we have a settlement. And I will notify the
12 department of that fact.

13 And then my understanding is, Mr.
14 Simes, you wanted to talk to me about a different
15 matter, you and Mr. Beery, is that correct?

16 MR. SIMES: Yes. If we can have that
17 time with you.

18 THE COURT: You can. I will get off this
19 phone and then I'll have -- you can -- I'll have the
20 secretary contact you once I'm back into my office,
21 okay?

22 MR. SIMES: Okay. And I would like to
23 say something before we part here. Thank you very
24 much, Mr. Willick, for understanding how we both
25 feel about certain things. And I can appreciate

1 that this worked out this way, sir.

2 MR. WILLICK: Thank you.

3 THE COURT: He said thank you in case you
4 didn't hear that. All right.

5 MR. BEERY: You're welcome.

6 THE COURT: All right. That will
7 conclude the matter. We're now going off the
8 record. Thank you, gentlemen.

9

10 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
11 PROCEEDINGS.

12

13 /s/ JoAnn Melendez

JO ANN MELENDEZ

14 CCR NO. 370

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Supreme Court of Nevada
SENIOR JUDGE PROGRAM

JUSTICE MICHAEL CHERRY
Program Supervisor

NANCY BECKER
Senior Judge



ILEEN SPOOR
Southern Program Coordinator

DEBORAH CREWS
Northern Program Coordinator

April 9, 2015

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gdsusa@rochester.rr.com

Marshal S. Willick, Esq.
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Las Vegas, Nevada 89110-2101
marsha|willick@willicklawgroup.com

Re: Willick v. Beery A-12-661766

Dear Gentlemen:

I have reviewed the comments by the parties regarding the draft Retraction and the Stipulation and Order of Dismissal. I have made changes consistent with the transcript reflecting the Settlement reached on August 19, 2014 as well as the comments.

Attached are the revised Retraction as well as the revised Stipulation and Order.

Please note that a settlement agreement placed on the record means that all parties are keeping up their right to appeal or contest any prior court rulings or jurisdictional issues. The Court in which the settlement is entered always retains jurisdiction to enforce the settlement. I added language to make this clearer in the Stipulation and Order. Waiver of past issues is not a condition of the settlement; it is the legal effect of a settlement.

ith respect to Mr. Beery and Mr. Simes' claims that the Settlement entered on the record is inconsistent with the discussions the parties had with me during the conference; this issue was not raised at the time the settlement terms were placed on the record. All parties agreed to the terms. It is the recorded agreement that controls. Each party wanted more in the confidential discussions, but each party also had areas upon which they refused to agree. The recorded agreement represented the compromise by all parties to achieve a resolution.

The Retraction edits were done to ensure that the Retraction is even-handed and a statement by all parties that what was previously published was inaccurate or was offensive to veterans with reference to specific statements. I made it in third-person format, rather than a statement of any particular party.

I believe the Retraction, Stipulation and Order now accurately reflect the Settlement reached on August 19, 2014. Hereinafter, any further disputes regarding the Settlement should be addressed to the sitting judge, the Honorable Stefany Miley through a motion to enforce settlement.

Sincerely,



Nancy A. Becker
Senior Judge

Enclosures: (2)

RETRACTION

A dispute arose between Jere Beery, Gene Simes, and Marshal S. Willick as well as the Willick Law Group concerning an article published by Willick regarding the use of a military member's disability benefits in divorce or other family law cases. Mr. Beery and Mr. Simes disagreed with the content of the article and wrote responses which were published by posts to the internet, in emails sent to third parties, and in blogs and group postings at many internet sites. A portion of the responses contained personal comments about Marshal S. Willick and the Willick Law Group. Marshal S. Willick wrote a rebuttal to those comments. The rebuttal did not mention any group or person by name, but it indicated the persons who wrote the response were *fanatics and akin to extremist groups on a jihad*. In addition, in an article, Mr. Willick compared the dangers faced by a soldier in combat with those faced by a zookeeper, indicating both put their lives on the line.

Marshal S. Willick acknowledges that it was never his intent to disparage veterans and regrets if the language in the articles gave offense to any veteran by using reference to extremist groups that veterans have been combatting on behalf of their country. The articles were intended to educate readers on his views on how disability benefits may be used in calculating alimony and child support, and the relation of those benefits to property awards in divorce. He apologizes for any inadvertent offense that might have occurred.

Jere Beery and Gene Simes admit that the personnel comments were written by them or published under their names were based upon assumed facts, without any proper investigation. Consequently the some of the comments misrepresented the truth or skewed facts about Marshal S. Willick, the Willick Law Group and employees of the Willick Law Group. Because they were inaccurate, the comments improperly attacked the reputation and honesty of Marshal S. Willick, the Willick Law Group and employees of the Willick Law group. Mr. Beery and Mr. Simes acknowledge it was not their intent to publish inaccurate comments and they apologize to Marshal S. Willick and the employees of the Willick Law Group for the remarks. Their intent was to contest Marshal Willick's views about veteran's disability benefits and express dismay over words in his articles which they felt were offensive to veterans.

To clear the air and prevent any misunderstanding, Mr. Beery and Mr. Simes admit they have *NO* knowledge of, and are aware of *NO* facts or occasions where Marshal S. Willick, Esq. said or did the things attributed to him in the various comments made or published by Mr. Beery or Mr. Simes listed below. Rather the comments were made in outrage and anger over the words Mr. Willick used in his articles and their belief that Mr. Willick's views on the laws regarding veteran's disability and pension benefits are wrong. Mr. Beery and Mr. Simes acknowledge that they have no facts to support that Mr. Willick:

Has ever said or written the words "Veterans Need Skinning."

Has ever "divulged secrets on how to drain every penny possible from a retired military veteran, including any disability compensation the veteran may be receiving." Mr. Willick publishes articles about military pension and disability compensation and the methods he believes, under existing laws, by which such benefits may be divided in

domestic law situations. The title to one of the articles did use the word "secrets" but not in the context suggested by Mr. Beery or Mr. Simes.

Has "made millions of dollars by distorting any facts surrounding veterans' military retirement pay, disability compensation and Combat Related Special Compensation (CRSC)."

Has ever "intentionally ignored any federal protection of veteran's disability compensation." Mr. Beery and Mr. Simes disagree with Mr. Willick's interpretation of federal and state laws involving veteran's disability compensation because they believe this interpretation ignores statutes they claim protect veteran's disability compensation.

Has ever claimed that "federal law carries absolutely no relevance in dividing veterans' disability compensation in state divorce law." Mr. Beery and Mr. Simes disagree with Mr. Willick's interpretation of federal law and how it relates to state domestic relations laws but acknowledge Mr. Willick did not make the specific statement attributed to him.

Has ever said that "disability compensation is not protected in any way."

Has ever "obtained large alimony and child support awards and then taken a large percentage of those awards for himself" or routinely has clients "sign a contingency agreement in which he gets 50% of all money awarded to his client for collection of alimony or child support." Mr. Willick and the Willick Law Group have received awards of attorney fees pursuant to contracts with their clients for representing clients in family law matters, including issues of alimony and child support.

Has ever claimed that a military member has intentionally abandoned his children due to deployment or military service.

Has ever used Post Traumatic Stress Disorder (PTSD) to "take away" a military members' children. Whether a parent, military or non-military, suffers from PTSD and how that disorder may affect the ability to care for children is an issue which has been raised by Mr. Willick and the Willick Law Group. In some cases this argument may have affected child custody issues.

Has ever used any "underhanded or unethical techniques" or any "legal deception designed to illegally strip our veterans of their earned retirement, benefits, and entitlements." Mr. Beery and Mr. Simes vehemently disagree with the legal arguments used by Mr. Willick, but acknowledge that such arguments have not been declared improper or unethical by any court or regulatory agency.

Has ever argued that "veterans are dangerous individuals unfit to care for their children."

Has ever "threatened to expose state and federal politicians and elected judges as anti-child support and anti-alimony if they did not agree to support his interpretation of veterans' benefits."

Has ever had any direct responsibility for any veteran's suicide, emotional disturbance, or homelessness. Mr. Beery and Mr. Simes believe that the orders made in some family law cases based on arguments or views similar to those expressed in Mr. Willick's articles have led to a veteran's suicide, emotional disturbance or homelessness.

Has ever violated any Rule of Professional Conduct.

Has ever committed treason, violated any criminal law, dismissed or otherwise violated any federal law.

Has ever threatened or forced any disabled veteran to sign a divorce settlement agreement.

Has ever "exploited the hardships of vulnerable military spouses and children" or "exploited the sacrifices of our returning service members." Mr. Beery and Mr. Simes acknowledge that the term "exploit" implies criminal conduct and that was not their intention.

Has ever, to Mr. Beery or Mr. Simes knowledge, taken any money from anyone in violation of any law, statute, or rule. The use of the term "crook" by Mr. Beery and/or Mr. Simes was intended to indicate their dislike for Mr. Willick and his views.

Mr. Beery and Mr. Simes acknowledge that they encouraged others to file complaints with the State Bar of Nevada alleging Mr. Willick engaged in criminal and unethical conduct when none of the persons doing the reporting had any actual knowledge of Mr. Willick's practice or any such violations. The Nevada State Bar dismissed the complaints.

Mr. Beery and Mr. Simes are sincerely sorry for the inaccurate statements made about Marshal S. Willick, Esq., his law firm, and the employees of that practice and Mr. Willick is sincerely sorry for his use of extremist language and terminology that offended veterans.

This Retraction is being posted with the specific intent that all who may have been misled or offended by the various writings and speech may realize that the authors never intended to place anyone in a false light or attack the men and women who so valiantly serve our Nation. Mr. Beery and Mr. Simes, in an attempt to further their cause, used inaccurate and therefore defamatory comments that they retract, when referring to Mr. Willick, the Willick Law Group and its employees. They apologize for those comments. Mr. Willick, in response to personal attacks upon the honesty and integrity of his firm and himself, reacted by calling the groups who wrote the attacks extremists and using words which offended many veterans. He apologizes for those remarks. All parties agree they will use more caution when publishing comments on this issue in the future to avoid defamatory or offense language.

(702) 438-4100

SAO
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3591 East Bonanza Road
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Las Vegas, NV 89110-2101

DISTRICT COURT
CLARK COUNTY, NEVADA

MARSHAL S. WILLICK AND THE WILLICK LAW
GROUP,

Plaintiff,

vs.

JERE BEERY, GENE D. SIMES, MARK BERES,
FREDERICK JONES, MICHAEL K. MCKOWN,
DON HOLLAND, VETERANS FOR VETERAN
CONNECTION, INC., OPERATION FIRING FOR
EFFECT, VETERANS TODAY MILITARY &
FOREIGN AFFAIRS JOURNAL, JONES &
ASSOCIATES, USFSPA LIBERATION SUPPORT
GROUP, DOES I THROUGH X,

Defendants.

CASE NO: A-12-661766-C
DEPT. NO: XXIII

DATE OF HEARING: N/A
TIME OF HEARING: N/A

STIPULATION AND ORDER

The parties have met in settlement conference with Justice Nancy Becker, and reached agreement settling this matter. Pursuant to that Settlement; Plaintiffs, Marshal S. Willick and the WILLICK LAW GROUP, and Defendants, Jere Beery and Gene Simes, hereby stipulate and agree as follows:

IT IS HEREBY STIPULATED AND AGREED by and between the parties that all causes of action except injunctive relief shall be dismissed. The action before the District Court, Case No. A-12-661766-C shall be closed without ever coming to trial, and all pending hearing dates shall be taken off calendar. Any appeal of any decisions previously made by the District Court in this action are waived by virtue of the Settlement.

WILICKLAW GROUP
3901 East Bonanza Road
Las Vegas, NV 89110-2101

IT IS HEREBY STIPULATED AND AGREED the Court shall retain jurisdiction over this action for the purpose of enforcement of the agreed-upon provisions of this settlement. Additionally, Marshal S. Willick, the Willick Law Group agree to be jointly and severally liable for any violations of the terms of this agreement and that Jere Beery and Gene Simes also agree to be jointly and severally liable for any violations of the terms of this agreement.

IT IS HEREBY STIPULATED AND AGREED that Defendants Jere Beery and Gene Simes and their agents are permanently enjoined from intentionally approaching within 1,000 feet of any of the following: (a) Marshal S. Willick, his vehicle or his home; (b) The Willick Law Group law office; and (c) any and all employees of The Willick Law Group, as well as their places of residences and vehicles.

IT IS HEREBY STIPULATED AND AGREED that Defendants Jere Beery and Gene Simes and their agents are permanently enjoined from communicating with or contacting Marshal Willick, the Willick Law Group, or any employee of The Willick Law Group, in person, by mail, telephone, email, or otherwise, once this lawsuit is concluded.

IT IS HEREBY STIPULATED AND AGREED that Defendants Jere Beery and Gene Simes are permanently enjoined from writing/posting/displaying/lodging any defamatory writing, video, internet posting, e-mail or other posting, writing, or communication, or other document or public display of the same that either generally or specifically identifies, refers to, or makes inference to Marshal Willick, the Willick Law Group, or any employee of the Willick Law Group, and any such posting made by Defendants prior to the date of this injunction will, to the extent physically possible upon specific attempt by Defendants, be removed by the Defendants from public view within 10 days from the issuance of this injunction.¹

¹ Public view is defined -- for the purposes of this agreement -- to include any place where any third party, whether named in this suit or not, can view the posting. This includes private blogs including Google Groups and Yahoo Groups.

WILLICK LAW GROUP
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Las Vegas, NV 89110-2101

statements made in violation of the injunction, punitive damages may be assessed. This Stipulated Agreement will be admissible as proof of admissions in any action required to enforce the terms of the Settlement.

ORDER

IT IS HEREBY ORDERED that the terms and conditions of the above *Stipulation and Order* are adopted and ratified by the Court, as follows:

IT IS FURTHER ORDERED that the trial setting for September 16, 2014, at 9:00 a.m. is vacated.

IT IS FURTHER ORDERED that Defendant Jere Beery's counterclaim is dismissed.

IT IS FURTHER ORDERED that Plaintiffs' claims, except the claim for permanent injunction, are dismissed.

IT IS FURTHER ORDERED that this Court, having reviewed the above stipulations, and good cause appearing therefor, adopts the stipulations outlined above as an order of this Court and modifies all previous orders set forth in this matter that are inconsistent with these stipulations.

DATED this ____ day of _____, 2015.

DISTRICT COURT JUDGE

Respectfully submitted:
WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
Attorney for Plaintiff

VERIFICATION
WALKER GROUP
3591 East Bonanza Road
Suite 200
Las Vegas, NV 89110-2101

1

STATE OF _____)
COUNTY OF _____)

Jere Beery, first being duly sworn, deposes and says:

He is the Defendant in the above-entitled action; he has read the above and foregoing *Stipulation and Order*, knows the contents thereof, agrees that it is acceptable to him.

JERE BEERY

VERIFICATION
AUBRIE GUNUP
3091 East Durango Road
Suite 200
Las Vegas, NV 89110-2101

1

STATE OF _____)
COUNTY OF _____)

Gene Simes, first being duly sworn, deposes and says:

He is the Defendant in the above-entitled action; he has read the above and foregoing *Stipulation and Order*, knows the contents thereof, agrees that it is acceptable to him.

GENE SIMES _____

WILLICK LAW GROUP

A DOMESTIC RELATIONS & FAMILY LAW FIRM
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PHONE (702) 438-4100 * FAX (702) 438-5311
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ATTORNEYS

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TREVOR M. CREEL

- * ALSO ADMITTED IN CALIFORNIA (INACTIVE)
- † FELLOW, AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
- ‡ FELLOW, INTERNATIONAL ACADEMY OF MATRIMONIAL LAWYERS
- § NEVADA BOARD CERTIFIED FAMILY LAW SPECIALIST
- ¶ BOARD CERTIFIED FAMILY LAW TRIAL ADVOCATE
BY THE NATIONAL BOARD OF TRIAL ADVOCACY



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(FIRST NAME OF INTENDED RECIPIENT)@WILLICKLAWGROUP.COM

April 15, 2015

Mr. Jere Beery
134 Savannah Ridge Trail
Demorest, Georgia 30535

Mr. Gene Simes
1700 Waterford Road
Walworth, New York 14568

Re: *Retraction and Stipulation and Order*
Sent via E-Mail ONLY to gdsusa@rochester.rr.com and jerebeery@aol.com.

Dear Mr. Beery and Mr. Simes:

Pursuant to the letter received on April 9, 2015, from Senior Judge Becker, please execute in front of a notary the verification page of the *Stipulation and Order* and return to us via (1) facsimile or e-mail of pdf, and (2) through the U.S. Mail. We will then sign the document and have it filed in the case; of course, you will each be copied with the file-stamped order.

After you have executed the *Stipulation and Order*, please post the retraction in all of the places used to defame Mr. Willick and the Willick Law Group. At a minimum, we expect to see this retraction posted on the first (or home page) of the following websites:

<http://www.offe.org/>
<http://www.veteranstoday.com/>
<http://www.veterancourtcodes.com/>
<https://www.facebook.com/jerebeery>
<http://veteranspolitics.yuku.com/>

We also expect that you will do a simple google search and contact any website that contains any of your defamatory writing and formally request that they take the same down, offering to give them a copy of the retraction for posting in place of the previously published article. We want to be copied on all such requests and any responses you receive.

Mr. Jere Beery
Mr. Gene Simes
April 15, 2015
Page 2

If it is your intention to not comply with any terms of the agreement and the *Stipulation and Order*, please so advise so that we can file the appropriate Motion in front of Judge Miley.

Your attention to and cooperation in this matter is required.

Sincerely yours,
WILLICK LAW GROUP



Marshal S. Willick, Esq.