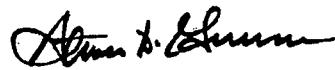


APPENDIX A:
State Trial Court order of dismissal


CLERK OF THE COURT

1 NEOJ
2 ADAM PAUL LAXALT
3 Attorney General
4 STEVE SHEVORSKI (Bar. No. 8256)
5 Head of Complex Litigation
6 THERESA M. HAAR (Bar. No. 12158)
7 Deputy Attorney General
8 State of Nevada
9 Office of the Attorney General
10 555 E. Washington Avenue, Suite 3900
11 Las Vegas, NV 89101
12 (702) 486-3783 (phone)
13 (702) 486-3773 (fax)
14 sshevorski@ag.nv.gov
15 thaar@ag.nv.gov

16 *Attorneys for Office of the Attorney General
17 of the State of Nevada*

18 DISTRICT COURT

19 CLARK COUNTY, NEVADA

20 JACK FERM,
21 Plaintiff,
22 vs.
23 OFFICE OF THE ATTORNEY GENERAL
24 OF THE STATE OF NEVADA, ONE
25 JANE DOE DEFENDANT, AND SIX
26 UNKNOWN EMPLOYEES OF THE
27 OFFICE OF THE ATTORNEY GENERAL
28 OF THE STATE OF NEVADA,
INCLUSIVE,

Defendants.

Case No. A-16-745102-C
Dept. No. XXVII

NOTICE OF ENTRY OF ORDER

21 PLEASE TAKE NOTICE that an ORDER GRANTING DEFENDANT'S SPECIAL
22 MOTION TO DISMISS was entered in the above-entitled matter on the 27th day of
23 February, 2017, a copy of which is attached hereto.

24 DATED this 27th day of February, 2017.

25 ADAM PAUL LAXALT
26 Attorney General

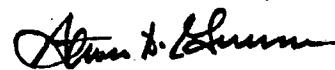
27 By: /s/ Steve Shevorski
28 STEVE SHEVORSKI (Bar No. 8256)
Head of Complex Litigation
Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on February 27, 2017, I electronically filed the foregoing document, **NOTICE OF ENTRY OF ORDER**, via this Court's electronic filing system. Parties that are registered with this Court's electronic filing system will be served electronically. For those parties not registered, service was made by depositing a copy for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada to the following:

Jack Ferm
1812 W. Sunset Blvd. #1-134
St. George, UT 84770

/s/ Barbara Fell
Barbara Fell, an employee of
the office of the Nevada Attorney General


CLERK OF THE COURT

1 OGM
2 ADAM PAUL LAXALT
3 Attorney General
4 STEVE SHEVORSKI (Bar. No. 8256)
5 Head of Complex Litigation
6 THERESA M. HAAR (Bar. No. 12158)
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16 *Attorneys for Office of the Attorney General
of the State of Nevada*

17 DISTRICT COURT
18 CLARK COUNTY, NEVADA

19 JACK FERM,
20 Plaintiff,

Case No. A-16-745102-C
Dept. No. XXVII

21 vs.

22 OFFICE OF THE ATTORNEY GENERAL
23 OF THE STATE OF NEVADA, ONE
24 JANE DOE DEFENDANT, AND SIX
25 UNKNOWN EMPLOYEES OF THE
26 OFFICE OF THE ATTORNEY GENERAL
27 OF THE STATE OF NEVADA,
28 INCLUSIVE,

Defendants.

29 **ORDER GRANTING DEFENDANT'S SPECIAL MOTION TO DISMISS**

30 Plaintiff filed his Opposition on January 17, 2017. Defendant filed its Reply on
31 January 25, 2017. The hearing on this matter was held on February 1, 2017. Plaintiff
32 was present telephonically. Defendant was represented by counsel, Steve Shevorski and
33 Theresa M. Haar, of the Office of the Attorney General. The Court, having reviewed the
34 pleadings and papers on file, finds as follows:

35 . . .

36 . . .

1 **A. Plaintiff's Causes of Action Pled in His Amended Complaint**

2 Plaintiff's Amended Complaint alleges breach of contract, contractual breach of the
3 implied covenant of good faith and fair dealing, tortious breach of the implied covenant of
4 good faith and fair dealing, bad faith, breach of the duty of honesty, defamation per se by
5 libel, and fraud. Plaintiff's Amended Complaint also seeks declaratory relief and an
6 accounting of the restitution he has paid in his criminal action.

7 **B. Plaintiff's Allegations in Support of All Causes of Action**

8 Plaintiff, through his United Justice Foundation, filed lawsuits on behalf of others
9 facing foreclosure, despite not being a lawyer. Amended Complaint at pg. 15, ¶¶11-15.
10 United States District Court Judge Hunt held Plaintiff in contempt of court and issued a
11 cease and desist order against Plaintiff. *Id.* at pg. 17, ¶25.¹ Judge Delaney had Plaintiff
12 arrested. *Id.* at pg. 16, ¶23. A grand jury indicted Plaintiff. *Id.* at pg. 18, ¶30.

13 Plaintiff then entered a plea of *nolo contendere*. *Id.* at Ex. A to Plaintiff's Amended
14 Complaint. Plaintiff pled *nolo contendere* to one felony count of Theft – Obtaining Money
15 in Excess of \$2500 by a Material Misrepresentation. *Id.* at 1:23-27. Plaintiff and the
16 State further agreed that, if Plaintiff repaid \$192,168 through monthly payments, then
17 he would be permitted to request that the plea be withdrawn and he be allowed to plead
18 guilty to one gross misdemeanor charge of Attempted Theft, if a court agrees. *Id.* at 2:4-
19 20. The plea agreement was filed in open court. *Id.* at pg. 1. Plaintiff was represented by
20 counsel, Herb Sachs. *Id.* at 4:5-6. Plaintiff agreed that his plea was voluntary. *Id.* at
21 4:11-14. Plaintiff agreed that he was relying on his counsel's advice and not the advice of
22 the State of Nevada. *Id.* at 4:11-23.

23 On October 31, 2011, the television station, KLAS, reached out to the Office of the
24 Attorney General, requesting a list of all individuals convicted by the Mortgage Fraud
25 Task Force. Amended Complaint at Exhibit B. Ms. Lopez, public information officer for
26 the Office of the Attorney General, provided a list of the 18 individuals. *Id.* The Office of
27 the Attorney General wrote regarding Plaintiff as follows: "1 Count Theft – Obtaining

28 ¹ On March 9, 2009, the State Bar of Nevada initiated an action against Mr. Ferm
for engaging in the unauthorized practice of law. Case No.: 09A584697.

1 Money in Excess of \$2,500 by a Material Misrepresentation, a B Felony." *Id.* The quoted
2 language appears in a spreadsheet's quadrant under the heading "convictions." *Id.*
3 (Hereafter, "Lopez' statement")

4 **C. Judicial Notice of Documents in Case #2:12-cv-00782-GMN-PAL**

5 Plaintiff filed suit against several media members for reporting based on Ms. Lopez
6 statement to KLAS. This lawsuit was assigned case #2:12-cv-00782-GMN-PAL.
7 Defendant requested that the Court take judicial notice of the following documents from
8 that litigation: 1. Plaintiff's Complaint in #2:12-cv-00782-GMN-PAL; 2. Defendants'
9 Response to Preliminary and Permanent Injunction in Case #2:12-cv-00782-GMN-PAL;
10 3. Exhibit 4 to Defendants' Response to Preliminary and Permanent Injunction in Case
11 #2:12-cv-00782-GMN-PAL; and 4. Plaintiff's stipulated dismissal in Case #2:12-cv-00782-
12 GMN-PAL.

13 Plaintiff did not object to Defendant's request that the Court take judicial notice of
14 these documents. The failure to object may be construed by the Court to be Plaintiff's
15 consent to Defendant's judicial notice argument. E.D.C.R. 2.20(e). Courts in this state
16 may also take judicial notice of filings in federal court because they are public records and
17 from a reliable source. *Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009).
18 The Court will therefore take judicial notice of Defendant's Exhibits 1-4.

19 **D. Court's Findings and Conclusions of Law**

20 **1. Plaintiff's Defamation Cause of Action is Dismissed**

21 Plaintiff's defamation cause of action fails as a matter of law. Lopez' statement to
22 KLAS is protected by Nevada's Anti-SLAPP law. The statement was made in good faith
23 by a government body's press information officer to a member of the media about issue of
24 public concern, the mortgage and foreclosure problem plaguing Nevada at the time the
25 statement was made.

26 Plaintiff cannot demonstrate a probability of prevailing for two reasons. First,
27 Plaintiff's defamation cause of action is time-barred by NEV. REV. STAT. 11.190(4)(c)'s two
28 year statute of limitation. Plaintiff waited until October 14, 2016 to file his complaint in

1 this action. This is over four years after learning of Lopez' statement's content in March
2 2012 and that Lopez was the author of the statement on September 13, 2012 in his
3 federal court proceeding. **Second**, moreover, Lopez' statement is substantially true.
4 Plaintiff entered a plea of nolo contendere is the same as a guilty plea. While
5 adjudication was held in abeyance, this fact would not have a different effect on the mind
6 of the reader reviewing Lopez' statement.

7 **2. Plaintiff's Other Tort Theories are Dismissed**

8 Plaintiff's tort theories, in addition to defamation, were tortious breach of the
9 implied covenant of good faith and fair dealing, bad faith, and breach of the duty of
10 honesty, and fraud. The Court dismisses these claims.

11 Plaintiff's causes of action for tortious breach of the implied covenant of good faith
12 and fair dealing, bad faith, and breach of the duty of honesty fail for the same two
13 reasons. **First**, there was no special or fiduciary relationship between Plaintiff and the
14 Office of the Attorney General. They were, in fact, adversaries in a criminal proceeding
15 where Plaintiff was represented by his own counsel, Mr. Sachs. **Second**, Plaintiff failed
16 to timely file suit under the three year statute of limitation for breach of fiduciary duty²
17 and the four year statute of limitation for tortious breach of the implied covenant.³

18 Plaintiff's fraud claim also fails for two reasons. **First**, Plaintiff failed to comply
19 with NRCP 9(b) that fraud must be pled with particularity. Plaintiff simply failed to
20 plead the factual detail showing a false statement of fact was made to him by an
21 identifiable person, which he relied upon. **Second**, Plaintiff's fraud claim is time-barred
22 by NRS §11.190(3)(d)'s 3 year statute of limitations. Plaintiff was actively litigating
23 against the Media defendants in federal court in September 2012 when he learned that
24 Lopez was the allegedly libelous statement's author, yet he waited until October 2016 to
25 file suit against Defendant. Plaintiff's fraud claim is time-barred.

26
27 ² The statute of limitations for breach of fiduciary duty is three years. *Nevada
State Bank v. Jamison Family P'ship*, 106 Nev. 792, 799-800, 801 P.2d 1377, 1382 (1990).

28 ³ Nevada maintains a four year statute of limitations for actions not otherwise
provided for in Chapter 11. NEV. REV. STAT. 11.220.

1 **3. Plaintiff's Contract Causes of Action are Dismissed**

2 Plaintiff pled causes of action for breach of contract and breach of the implied
3 covenant of good faith and fair dealing. "Plea agreements are contractual in nature and
4 are measured by contract law standards." *United States v. De la Fuente*, 8 F.3d 1333,
5 1337 (9th Cir. 1993). Plaintiff's contract theories fail for two reasons. First, Plaintiff
6 fails to identify a promise that Defendant allegedly breached causing him damage. The
7 plea agreement's contents are a public record and do not contain a non-disclosure clause.
8 Therefore, Lopez could not have breached any promise within the plea agreement by
9 commenting on the plea agreement to the media. Second, Plaintiff cannot use the
10 implied covenant to create a contractual duty that the parties themselves did not bargain
11 for in the plea agreement. Defendant was not under a duty of non-disclosure.
12 Defendant's comment to the media regarding the plea agreement cannot have breached
13 Plaintiff's reasonable expectations under the publicly filed plea agreement.

14 **4. Plaintiff's Declaratory Relief and Accounting Claims are Dismissed**

15 Plaintiff's causes of action for declaratory relief and accounting lack merit. First,
16 declaratory relief is a remedy not a cause of action. Second, Plaintiff must challenge the
17 amount of the restitution he owes in his criminal proceeding.

18 **IT IS HEREBY ORDERED** that Defendant's Special Motion to Dismiss is
19 **GRANTED.**

20 DATED this 21 day of February, 2017.

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\APPENDIX B:
Nevada Court of Appeals decision denying appeal

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACK FERM,
Appellant,
vs.
THE STATE OF NEVADA, OFFICE OF
THE ATTORNEY GENERAL,
Respondent.

No. 72753

FILED

JUL 13 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jack Ferm appeals from a district court order dismissing his amended complaint. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Ferm filed an amended complaint against respondent, the State of Nevada, Office of the Attorney General, for, among other things, breach of contract and breach of the covenant of good faith and fair dealing. The claims arise out of allegations that the Attorney General's office falsely identified Ferm as a person convicted of a felony in relation to mortgage fraud to a media researcher. Ferm alleged this communication was a breach of contract where the plea agreement he entered into with the Attorney General's office provided that he was pleading nolo contendre to a felony, but that adjudication would be held in abeyance while he paid \$192,168.00 in restitution and that, if he paid restitution, the State would allow him, with court approval, to withdraw his plea and enter a plea of guilty to a gross misdemeanor. He further alleged that this was a breach of the covenant of good faith and fair dealing because the Attorney General's office provided the media with false information for publication on the internet, knowing it was untrue, and for the purpose of creating an atmosphere

where Ferm would not be able to pay restitution and would thereafter be convicted of a felony. The Attorney General's office filed a motion to dismiss, which was granted over Ferm's opposition. This appeal followed.¹

An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *see also Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Dismissing a complaint is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672. While the court generally may not consider matters outside of the complaint when ruling on a motion to dismiss for failure to state a claim, it can take into account any exhibits attached to the complaint. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

A breach of contract arises when there is a "material failure to perform a duty arising under or imposed by agreement." *State Dep't of Transp. v. Eighth Judicial Dist. Court*, 133 Nev. ___, ___, 402 P.3d 677, 682 (2017) (internal quotation marks omitted). A contract will be enforced as written. *Id.* Courts cannot "interpolate in a contract what the contract does

¹Ferm's amended complaint contained numerous causes of action, all of which were dismissed; however, on appeal Ferm only challenges the dismissal of his breach of contract and breach of the covenant of good faith and fair dealing claims and therefore, this order only addresses those claims.

not contain.” *Id.* Here, even assuming Ferm could bring a civil action for money damages arising out of an alleged breach of a criminal plea agreement,² his claim fails as a matter of law. Ferm failed to identify any duty imposed by the plea agreement which the Attorney General’s office breached. Contrary to Ferm’s arguments on appeal, the Attorney General’s office’s communication with the media did not work to adjudicate his plea. Further, the plea agreement, which was attached to Ferm’s amended complaint, does not contain a non-disclosure provision and Ferm does not allege that it does. Because Ferm failed to identify a promise that was breached by the Attorney General’s office, he failed to state a claim for breach of contract and dismissal was proper. *See id.; Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

Similarly, because the plea agreement did not contain a non-disclosure provision, the Attorney General’s office did not breach the covenant of good faith and fair dealing by communicating with the media regarding Ferm. The covenant of good faith and fair dealing requires each party to act in a manner that is faithful “to the purpose of the contract and the justified expectations of the other party.” *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991). While the covenant of good faith and fair dealing can be breached even if the terms of the contract are literally complied with, *see id.* at 232, 808 P.2d at 922-23, the covenant “cannot be extended to create obligations not contemplated by the contract.” *Pasadena Live, LLC v. City of Pasadena*, 8 Cal. Rptr. 3d 233, 237 (Ct. App. 2004) (internal quotation marks omitted). The plea

²Because Ferm’s claims otherwise fail, we need not address and therefore make no comment on the propriety of a civil damages suit relating to an alleged breach of a criminal plea agreement.

agreement did not require the Attorney General's office to refrain from disclosing information regarding Ferm or his plea agreement and to impose such a requirement would contradict the terms of the agreement. Therefore, Ferm had no justified expectation that the Attorney General's office would refrain from engaging in the communication at issue here. *See Hilton Hotels*, 107 Nev. at 234, 808 P.2d at 923. Thus, his claim fails as a matter of law and dismissal was proper. *See Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Silver, C.J.
Silver

Tao, J.
Tao

Gibbons, J.
Gibbons

cc: Hon. Nancy L. Allf, District Judge
Jack Ferm
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

APPENDIX C:
Nevada Supreme Court Order denying Review.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK FERM,
Appellant,
vs.
THE STATE OF NEVADA, OFFICE OF
THE ATTORNEY GENERAL,
Respondent.

No. 72753

FILED

NOV 28 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR REVIEW

Review denied. NRAP 40B.

It is so ORDERED.¹

Douglas, C.J.
Douglas

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

cc: Hon. Nancy L. Allf, District Judge
Jack Ferm
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

¹The Honorable Mark Gibbons, Justice, did not participate in the decision of this matter.