August 29, 2020

James D. Shipman, Mediator

Pacific Mediation

2918 Colby Avenue, Suite 201

Everett, WA 98201

**Re: Mediation in Smith Divorce (August 30, 2020 Mediation Date)**

Dear Mr. Shipman:

Thank you for agreeing to mediate the above-captioned matter. Please consider this letter the informal mediation memorandum of my client, Jane Smith. Bradley Stevens of Stevens Law Group represents the opposing party, John Smith.

This is an action for divorce of a ten-year marriage. They have two young daughters, Maya (5 years old) and Candy (4 years old). Jane continues to live in the former family home in Snohomish. Mr. Smith rents an apartment near the former family home.

The main issue in the case is Mr. Smith’s drinking and formulating a parenting plan. He is not a bad father when sober, but the children need to be safe. Child support, maintenance, and property division are also in issue.

Trial is scheduled for October 18, 2020.

**I. SUMMARY OF RELEVANT FACTS**

**A. The Parties’ Marriage**. The parties married in 2009, making this an 11-year marriage. Both have worked throughout their relationship, often remotely from home.

Jane began at Sears and rose through executive ranks in the apparel industry, accepting ever-higher-level positions at large clothing retailers.

Mr. Smith, on the other hand, was a search engine optimization specialist who left his employer early in the parties’ relationship. He wanted to open his own search engine optimization business.

After opening his own business, his career and parenting suffered, perhaps because of the lack of structure. Mr. Smith had always been a drinker and suffered from mild depression.

He began drinking more heavily, claiming it helped him with his depression. His drink of choice was Smirnoff Vodka. He would start drinking as early as 4 pm and continuously drink until he passed out on the couch in front of the TV by midnight. The parties’ children would see the vodka bottle and call it “Daddy’s drink”.

Attached as **Exhibit A** is a copy of a January 2020 email he sent to Jane and his family about his decision to stop drinking, get professional help with his depression, and move out of the house. It reads in relevant part:

Through proper medication, therapy, sobriety and prayer, I’m beginning to see with fresh eyes, a clear head . . . . That doesn’t stop the pain or fix the mistakes, but I know now that God has happiness and great things in store for my life . . . . I am scouting out areas for month-to-month apartments.

Mr. Smith did not stop drinking for long. He moved out in early February 2020 and sent Jane pictures of his new apartment. In one of the pictures she saw a bottle of Smirnoff, his vodka, sitting on the counter. Attached as **Exhibit B** is a copy of the text chain. It reads:

**Mr. Smith:** [pictures of his new apartment]

**Jane:** I see Smirnoff [surprised emoji face]. But I like the place.

**Mr. Smith:** It’s Saturday[,] don’t judge.

**Jane:** I’m not.

**Mr. Smith:** If I can’t have some drinks on a Saturday night with a friend then wtf[.]

**B. Temporary Orders**. In mid-March 2020 – about two months after the parties’ separation – Jane began drafting her petition for divorce and motion for a temporary parenting plan granting her primary care of the children. Just a few days before filing her petition, Nike eliminated Jane’s position. In light of the suspicious timing, Jane proposed that the Court temporarily impute her at the amount she had been making at Nike, $15,291.70 per month gross.

Mr. Smith, in response to Jane’s request for temporary orders, claimed he had been the primary caretaker of the children. He said Jane abused her Xanax prescription, and her work took her away from the children. According to Mr. Smith, he ran his own business from home so he could parent more actively. He also supplied settlement correspondence in which Jane had agreed to him having the children 50% of the time.

To head off Jane’s concerns about depression and alcoholism, Mr. Smith voluntarily attended therapy for his depression, obtained a substance abuse assessment, admitted to drinking heavily for approximately four months prior to the parties’ separation, stopped drinking, and submitted to random UAs. The court continued the hearing on temporary orders until May 5, 2020.

The alcohol assessment came back the business day prior to the continued hearing. In the assessor’s opinion, Mr. Smith did not meet the definition for an alcoholic because his heavy drinking had only been for a short period and he had stopped consuming alcohol.

Commissioner Lee Tinney adopted a 50/50 temporary parenting plan but prohibited Mr. Smith from consuming alcohol and non-prescribed drugs. She did not limit Mr. Smith’s residential time with the children because he only “experienced a short term problem resulting from alcohol [and] does not have a long term impairment . . . that impacts parenting.”

**C. Mr. Smith’s Mental Health & Drinking Since Entry of Temporary Orders**. Mr. Smith may have suffered a remission in the last few months. His mood in his text messages to Jane has been erratic, ranging quickly from kind to upset. At times the tone and number of texts have also been indicative of manic episodes. Jane recently blocked his messages because of the volume. Jane is concerned depression will lead to more drinking, but she would also like to give Mr. Smith the benefit of the doubt.

**D. Jane’s Current Income**. Since the hearing on temporary orders, Jane has had surprising difficulty finding new employment. She has interviewed extensively, including a few days ago and today. Attached as **Exhibit C** is a printout showing the subject lines of over 350 job-search related emails Jane has sent since she lost her job in late March 2020.

Meanwhile she has been using the balance of a 401k withdrawal to pay the mortgage on the family home, her living costs, and her family support obligation. The parties agreed in email correspondence to her use of the 401k funds so long as she is credited with receiving these funds on their asset-debt spreadsheet.

**E. Mr. Smith’s Current Income**. Mr. Smith has accepted a new position working in-house with one of his clients. He now makes $90,000 per year – about double what he had been earning through his business.

**II. SETTLEMENT PROPOSAL**

 1. **Distribution of Community Assets**. Jane proposes a 50/50 division of the net value of the community’s assets. Attached as **Exhibit H** (the last page, for ease in locating it quickly) is Jane’s asset and debt spreadsheet. The settlement offer with respect to the parties' most notable community assets is as follows:

A. *Family Home*. We proposed selling the former family home. Mr. Smith would receive $11,000 more than Jane from the net proceeds.

Jane is willing to continue paying the mortgage through the date of sale so long as she is allowed to live there until then.

Mr. Smith has said he wants Jane to pay back the $20,000 his parents gave them to help with the down payment. She declines. At the time of conveyance the money was a gift. Attached as **Exhibit D** is the gift letter and the cancelled check, dated June 22, 2016 and June 23, 2016, respectively. The parties intended to pay the $20,000 back when they were together, but that intent was legally unenforceable. Prior to the divorce, Mr. Smith’s parents also said the parties did not need to pay back the money. Now Mr. Smith wants the money back for his own financial gain.

B. *Boat*. We propose that Mr. Smith receive the boat. The parties agree it is worth approximately $25,000. There is essentially no equity in the boat, because the loan against it is almost exactly $25,000 as well.

C. *Party’s Retirement Plans*. Each party keeps his or her own retirement accounts. Jane has already withdrawn all $54,978.01 from her Macy’s 401k, as mentioned above. She is credited with receiving this amount on Jane’s proposed asset and liability spreadsheet.

D. *Parties’ Vehicles*. Each keeps his or her own. The vehicles are leased and have no apparent equity.

 2. **Reimbursements**.

A. *Parties’ Credit Card*. Jane should be reimbursed $12,080 for the expenditures Mr. Smith charged to their credit card after the parties’ separation. Jane paid the credit card off. Documentation of the charges is attached as **Exhibit E**. The reimbursement is factored into Jane’s proposed asset and liability spreadsheet.

B. *Parties’ Boat Payments*. Jane should be reimbursed $1,679.30 for her payments on the parties’ boat after separation. She has been making the $239.90 payments to preserve the community’s credit. The reimbursement is factored into Jane’s proposed asset and liability spreadsheet.

 3. **Attorney Fees**. Each pays his or her own. Mr. Smith has no need for an attorney fee award. He has been threatening to lie and run up the attorney fees if Jane does not give him what he wants. As he wrote in one of his threatening text messages:

**Mr. Smith**: My parents are a goldmine[;] money [for an attorney] is not an issue.

**Jane**: Great!

**Mr. Smith**: Your tab keeps getting bigger by the day.

**Jane**: Thanks John. Keep those rude comments coming you great Christian man.

 4. **Spousal Maintenance**. None. Jane had been paying Mr. Smith $2,500 per month in temporary undifferentiated family support. Mr. Smith no longer has a need for $2,500 in support now that his income has increased from $45,000 to $90,000. Moreover, Jane is unemployed due to no fault of her own.

 5. **Parenting Plan**. Jane is willing to accept a 50/50 parenting plan if the parties settle on all other issues at mediation and the parenting plan includes a provision for on-demand UAs. She believes the children would be better off in her primary care, but she acknowledges that the stress of this case impacts the children as well. If the parties cannot settle all issues, Jane will seek primary care at trial. Her proposed parenting plan is attached as **Exhibit F**.

 6. **Child Support**. Jane proposes a transfer payment of zero if the parenting plan is 50/50. Jane would be imputed at her most recent rate of pay, John would be listed as obligor, and John would receive a deviation to zero based upon his residential time and lower income. Jane’s proposed child support order and worksheets are attached as **Exhibit G**. Should this matter proceed to trial and Jane receive primary care of the children, John would owe her child support.

 Thank you again, Mr. Shipman, for your help on this matter. We very much look forward to working with you.

 Sincerely,

 GENESIS LAW FIRM, PLLC

 /S/

 SAMUEL K. DARLING