IN THE SUPREME COURT OF THE STATE OF NEVADA

ESTATE OF MICHAEL DAVID ADAMS, BY AND THROUGH HIS MOTHER JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE,

Appellant,

v.

SUSAN FALLINI,

Respondent.

Supreme Court No.: 68033

District Court Case No.: CV34529

Appeal from the Fifth Judicial District Court of the State of Nevada in and for the County of Nye

The Honorable Robert W. Lane, District Judge

APPELLANT'S PETITION FOR REHEARING

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Pursuant to NRAP 40, Plaintiff respectfully petitions this Court for a rehearing of its December 29, 2016 Opinion (hereafter "Opinion").

I. Basis for Petition for Rehearing

NRAP 40(c) provides:

> **(c) Scope of Application; When Rehearing Considered.**
>
> . . .
>
> (2) The court may consider rehearings in the following circumstances:
>
> (A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or
>
> (B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

NRAP 40(c)(2).

A. This Court Overlooked and Misapprehended Material Facts in the Record and Material Questions of Law in the Case

1. This Court misapprehended or overlooked the basis for the *default* judgment

In the Opinion, this Court stated the following:

- "But here, the Estate's counsel seized on that abandonment as an opportunity to create a false record and present that record to the district court as the basis for judgment." (Opinion, pp. 7-8.)

- "[W]e hold that counsel may not rely on the deemed admission of a known false fact to achieve a favorable ruling." (Opinion, p. 8.)

- "However, despite clear indication that the accident occurred on open range, the Estate's counsel propounded his request for admissions in 2007, sought partial summary judgment in 2008, and applied for default judgment in 2010, **all based on the false premise that the accident did**

not occur in open range. Thus, the district court did not abuse its discretion in finding that the Estate's counsel knew or should have known that the accident occurred on open range when he used the deemed admission to the contrary to secure a judgment for the Estate." (Opinion, pp. 9-10 (emphasis added).)

- "[T]he Estate's counsel's duty of candor required him to refrain from relying on opposing counsel's default admission that the accident did not occur on open range, when he knew or should have known that it was false, and that the district court did not abuse its discretion in finding the Estate's counsel committed fraud upon the court when he failed to fulfill his duties as an officer of the court with candor." (Opinion, p. 10.)

These conclusions are incorrect and demonstrate that the Court misapprehended or overlooked the legal basis for the *default* judgment.

The *default judgment* was entered after the district court struck Defendant's Answer and Counterclaim as a discovery sanction for Defendant's refusal to participate in discovery and/or abide by orders of the district court. Plaintiff sent various discovery to Defendant, which Defendant never answered. (AA I, 0043-60.) Plaintiff's counsel sought repeatedly to elicit responses to the discovery Plaintiff had sent.[1] (AA I, 0077, 80-81.) As a result of Defendant's failure to participate in the litigation and failure to abide by court orders, Plaintiff sought to strike Defendant's Answer and Counterclaim. That Motion to Strike was denied initially, although Defendant was ordered – pursuant to NRCP 16.1, 26, 33, 34, and 37 – to provide

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[1] Plaintiff set forth the extensive procedural history in detail in the Opening Brief. (Appellant's Opening Brief, pp. 6-22.)

certain documents and was sanctioned. (AA I, 0147-148.) Defendant was specifically advised that additional sanctions would be granted if Defendant did not comply with the district court's order. (AA I, 0148.)

Despite this admonishment, Defendant continued to fail and refuse to answer discovery or abide by court orders. On November 4, 2009, the district court ordered that Defendant's Answer and Counterclaim be stricken and default be entered against Defendant.[2] (AA I, 0165-170.) That order makes it clear that default was being entered as a *discovery sanction*, pursuant to NRCP 26, 34, and 37, and because "the normal adversary process has been halted" due to Defendant's refusal to answer discovery – not because partial summary judgment based on Defendant's admissions had already been entered. (AA I, 0169, ls. 8-21.) The district court said "Defendant has been given ample opportunity to comply with the Court's Orders, and striking Defendant's Answer and Counterclaim is appropriate under the circumstances." (AA I, 0170, ls. 3-4.)

On February 4, 2010, the district court entered default against Defendant, stating:

> Defendant and her counsel have not participated in this matter in good faith and both have been found in contempt of Court. Based on the Findings of Fact and Conclusions of Law, on November 4, 2009, it was ordered that Defendant's Answer and Counterclaim be stricken and the Court Clerk enter a Default against Defendant Susan Fallini. Default is

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[2] Defendant's counsel appeared at the hearing on September 28, 2009, which was held in Chambers, and did not present any facts contrary to what had been presented to the district court. (AA I, 0165-166.)

so entered. (AA I, 0174-175.)

Notice of Entry of Default was served on February 8, 2010. (AA I, 0171-172.)

Several additional discovery/contempt motions followed. Eventually, on June 2, 2010, the district court set forth five pages of Findings of Fact related to Defendant's discovery abuses and refusal to participate in the litigation.[3] (AA I, 0195-199.) Among those Findings was the following:

> Again in contravention of the Court's orders, Defendant and her counsel have failed and refused to provide the information they have been ordered to provide. Defendant's counsel's utter refusal to abide by the Court's orders has stalled and frustrated the litigation process. (AA I, 0098, par. 17.)

The Conclusions of Law refer to NRCP 26, 34, and 37. Those Conclusions provide, in pertinent part:

> 5. The Nevada Supreme Court held that default judgments will be upheld where "the normal adversary process has been halted due to an unresponsive party, because diligent parties are entitled to be protected against interminable delay and uncertainty as to their legal rights." . . . .
>
> 6. Defendant has provided no responses whatsoever, nor has Defendant objected to any request. Defendant has failed on at least four occasions to comply with this Court's Order. At no time has Defendant or her counsel given any excuse or justification for their failure and refusal to abide by the Court's orders.
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> 7. Defendant has been given ample opportunity to comply with the Court's Orders. Defendant has halted the litigation process and

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[3] Defendant's attorney appeared at the hearing on May 24, 2010, but did not present facts contrary to what had been presented to the district court. (AA I, 0194-195.)

> the additional sanctions of $5,000.00 immediately and $500.00 per day beginning June 1, 2010, if Defendant does not comply with the Court's prior orders, are appropriate under the circumstances.

(AA I, 0200 (case citations omitted).)

The district court imposed additional monetary sanctions. (AA I, 0201.)

Then, in June 2010, Plaintiff filed her Application for Default Judgment. The entirety of the liability portion of that brief is as follows: "Pursuant to NRCP 55, the Court should enter a default judgment against Defendant." (AA I, 0211.) The remainder of the brief dealt with the calculation of damages. In its Order After Hearing, the district court stated that it denied Defendant's Motion for Reconsideration and proceeded with the prove up "[a]fter hearing arguments from both sides regarding the Defendant's violation of **procedural rules**." (AA II, 0338 (emphasis added).) Thus, this Court has misapprehended the legal basis for the *default* judgment. The record refutes the four conclusions listed above, and Plaintiff's Petition for Rehearing should be granted.

2. This Court misapprehended or overlooked the facts of this case and misapplied the law of the cases cited in the Opinion to the facts of this case

The Court stated that counsel violates his duty of candor when he "(1) proffers a material fact that he knew or should have known to be false. . . and (2) relies upon the admitted false fact to achieve a favorable ruling." (Opinion, p. 9.) The Court cites *Sierra Glass & Mirror v. Viking Indus., Inc.*, 107 Nev. 119, 125-26, 808 P.2d 512, 516 (1991) and *Seleme v. JP Morgan Chase Bank*, 982 N.E.2d 299, 310-11 (Ind.

Ct. App. 2012) in support of the first prong of this test. (Opinion, p. 8.) But the facts of *Sierra Glass* are easily distinguishable from the facts in this case. In *Sierra Glass*, the attorney omitted from trial portions of a deposition that the attorney knew were relevant to a key issue in the case and misstated the omitted testimony in the appellate brief – and then failed to correct the record when opposing counsel pointed out the misstatement. 107 Nev. at 126.

The Court cites *Seleme v. JP Morgan Chase Bank*, 982 N.E.2d 299, 310-11 (Ind. Ct. App. 2012) for the proposition that counsel cannot make an alleged misrepresentation "with respect to a material fact which would change the trial court's judgment." (Opinion, p. 9.) In both *Sierra Glass* and *Seleme*, the omission and/or misrepresentation left the court unaware of the omitted facts. That is not what happened here. To the contrary, as explained above, the *default* judgment was not based on the unanswered admissions. But even if it was, the district court was made aware that the admissions had gone unanswered (i.e., they were admissions by default, not affirmative representations by Plaintiff) (AA I, 0015), and then Defendant was permitted to testify to provide evidence contrary to the admissions, and even convinced the district court to take judicial notice that the incident happened in open range. (AA II, 0274-295, 0322.) The district court then took three weeks to ponder the testimony and state of the record before entering *default* judgment against Defendant. (AA II, 0338-340.) These cases cited by the Court actually support Plaintiff's position, not Defendant's fraud assertions.

Regarding the second prong, this Court has also misapplied the law to the facts of this case. This Court cites *Kupferman v. Consol. Research & Mfg. Corp.*, 459 F2d 1072, 1078-79 (2nd Cir. 1972), for the proposition that "pursuing case with known complete defense could be fraudulent, where defense was **unknown to the court**, or, apparently, **unknown to the defending parties**." (Opinion, p. 9 (emphasis added).)

That did not occur in this case. As set forth above, and in Appellant's Opening Brief, the alleged affirmative defense was set forth in its entirety in Defendant's Answer and Counterclaim (AA I, 0008-09)[4], which was later stricken as a discovery sanction. The allegedly false fact was fully litigated before the district court in written pleadings and through live testimony – and the district court took *judicial notice* that the incident occurred in open range, which was the opposite of the default admissions. (AA I, 0332.) The alleged affirmative defense was well known to both Defendant and the district court.

The Court also cited *Conlon v. United States*, 474 F.3d 616, 622 (9th Cir. 2007), in support of the second prong. However, the facts related to the admissions in *Conlon* are similar to the facts in this case and actually support Plaintiff's position. *Conlon* focuses on whether the district court properly denied Conlon's motion to withdraw his admissions – something that still has never happened in this case. Nevertheless, in *Conlon*, approximately two months before the discovery cut off, the

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[4]In the Order granting Partial Summary Judgment as to duty and breach, the district court affirmed it has "reviewed all the pleadings and papers on file herein," and that no opposition had been filed. (AA I, 0026-28.)

government sent requests for admission to Conlon. 474 F.3d at 620. Those requests included key admissions that were central to Conlon's case. *Id.* at 619-20. Conlon did not answer the requests. A few days after the deadline to respond passed, the government attorneys contacted Conlon and then followed up with a letter advising him that the matters in the requests were deemed admitted. *Id.* at 620. Then, three days before the dispositive motion deadline, the government filed a motion for summary judgment that the district court recognized "turn[ed] on admissions made by plaintiff during discovery." *Id.* at 621. Moreover, the admissions were contrary to a prior finding of a different federal district court order that had determined the government "did not have jurisdiction to issue the warrant" against Conlon (although the order stopped short of concluding the government acted negligently.) *Id.* at 626.

The court reiterated the longstanding law that "[u]nanswered requests for admissions may be properly relied on as the basis for granting summary judgment." *Id.* at 621. The *Conlon* court found that the district court's denial of Conlon's motion to withdraw admissions, and the subsequent granting of summary judgment, was not clearly erroneous. *Id.* at 624.

While this Court's quotations from *Conlon* are accurate, when *Conlon* is viewed in its entirety and in light of the facts of this case, *Conlon* actually supports the findings of this Court on the first appeal (assuming this Court still believes the default judgment was based on the admissions).

Even if the Court still believes the admissions were the basis for the default

judgment, the Court has misapplied the case law it cited to the facts of this case, and the Opinion should be withdrawn.

3. The Court misapplied the law in Footnote 4

In Footnote 4 on page 10, the Court dismissed Plaintiff's argument that the district court was not deceived because it took judicial notice of the fact that the accident had occurred on open range because, **four years** after the district court took judicial notice, "the district court later clarified that it did not know that 'open range' had a significant legal consequence, much less that it gave Fallini a total defense to liability." (Opinion, p. 10, Footnote 4.)

Despite her refusal to respond to discovery throughout the case, prior to entry of default judgment, Defendant retained new counsel. In Defendant's Opposition to Application for Default Judgment, Defendant provided several hearsay documents, including a letter and unsigned affidavits, asserting that the incident took place on "open range." (AA II, 0285-295.) Defendant's Opposition noted that "Plaintiff's Counsel has accurately described the procedural history of this case beginning at page 3 of his motion, and continuing through page 7."[5] (AA II, 0267.) Defendant then asserted that the admissions were inaccurate, and that the incident occurred in open range. (AA II, 0277.) After acknowledging that Defendant's prior counsel failed to

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[5] On page 3 of Plaintiff's Application for Default Judgment, Plaintiff stated: "Pursuant to Requests for Admission that Defendant never answered, Defendant admitted the following. . ." and then Plaintiff listed the requests that were never answered. (AA II, 206.)

respond to requests for admission or the motion for partial summary judgment, Defendant stated the following:

> The Court had no choice but to grant the motion for summary judgment, **even though the factual premise therefore is patently untrue.** Had defendants been properly represented, the Court may well have taken judicial notice that the area in question in this case was open range. Instead, the Court was forced to accept a false factual premise due to Kuehn's failures." (AA II, 0278 (bold emphasis in original, underlining added).)

Defendant went on to argue the district court's granting partial summary judgment was clearly erroneous and resulted in manifest injustice. (AA II, 278-279.)

At the hearing, Defendant raised a comparative fault defense. When Plaintiff's counsel questioned how Defendant could raise an affirmative defense (as the Answer had been stricken), the district court stated: "You should be aware that out here in the rurals, cows run on highways." (AA II, 0298-299.) The district court then allowed Defendant to testify that the stretch of highway where the incident occurred was open range. (AA II, 0322.) Over Plaintiff counsel's objection, the district court took judicial notice of the location of the incident, stating "I know that it is" in open range. (AA II, 0322.)

The district court is permitted to take judicial notice of a fact not subject to reasonable dispute:

> **NRS 47.130 Matters of fact.**
> 1. The facts subject to judicial notice are facts in issue or facts from which they may be inferred.
> 2. A judicially noticed fact must be:

(a) Generally known within the territorial jurisdiction of the trial court; or

(b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,

➥ so that the fact is not subject to reasonable dispute.

As the Nevada Supreme Court has noted previously:

> The theory of taking judicial notice of a fact . . . is that it is a judicial short cut, a doing away, in the case of evidence, with the formal necessity for evidence because there is no real necessity for it. . . . What is known need not be proved. . . . "Judicial notice takes the place of proof, and is of equal force. As a means of establishing facts, it is therefore **superior to evidence**. In its appropriate field, it displaces evidence, since, as it stands for proof, **it fulfills the object which evidence is designed to fulfill, and makes evidence unnecessary**." Judicial notice has been applied to a wide range of subjects from the facts of ordinary life to the arts, sciences and professions, confined only to those things which any well informed person would be presumed to know.

Lemel v. Smith, 64 Nev. 545, 566, 187 P.2d 169, 179 (1947) (citations omitted and emphasis added).

The record clearly indicates that the district court knew what it meant to take judicial notice, and the district court knew the state of the evidence. The district court clearly stated that it knew the incident occurred in "open range" – a proposition that is exactly the opposite of the admissions. The district court then took approximately three weeks to consider the matter, review the file, and make the decision on the *default* judgment. (AA II, 0296, 0338.)

Respectfully, even if the district court did not understand what it was doing

when it took judicial notice of the apparently widely known fact, the district court had a duty to know the law related to judicial notice.

> **Rule 2.5. Competence, Diligence, and Cooperation.**
>
> (A) A judge shall perform judicial and administrative duties competently and diligently.
>
> (B) A judge shall cooperate with other judges and court officials in the administration of court business.
>
> **COMMENT**
>
> [1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.
>
> [2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.
>
> . . . .

Nevada Code of Judicial Conduct 2.5.

The district court was required to review the Answer it struck and to know the legal consequences of doing so, and it did. (AA I 0026-28, 0086-0148; II 0339.) A judge who had been on the bench for more than a decade in Nye County had an affirmative duty to know what open range is and how the law applied to this case. As Defendant stated to this Court in the first appeal, ". . . the fact that the area where the cow was struck was open range was and is common knowledge in Nye County. . . ." (AA III, 0568.) In the first appeal, Defendant claimed that the district court violated its obligations to Defendant in light of "what it knew to be the true facts in the case." (AA IV, 0753.) Long before its claims of fraud against Plaintiff's counsel, Defendant

repeatedly acknowledged that the district court knew the facts about where the incident occurred but claimed the district court should have ruled differently. (AA II, 0346; III, 0511; IV 0784-785.)

Finally, the district court took judicial notice back in 2010. It was not until the hearing in August 2014 – more than 4 years later – that the district court first asserted it did not understand the law on open range.

B. The Court overlooked, misapplied, and failed to consider its prior decision in this matter and the decision in a separately filed fraud case

1. The Court has overlooked what it addressed in the first appeal

This Court acknowledged but overlooked its prior affirmation of the district court's entry of default judgment. On page 3 of the Opinion, the Court acknowledged the prior proceedings: "The district court denied reconsideration and, after striking Fallini's answer, entered a default judgment for the Estate, ***which we affirmed in substance*** but remanded with respect to the district court's award of damages." (Opinion, p. 3 (emphasis added)). But later, on page 6 of the Opinion, this Court stated: "Neither Fallini's motion for reconsideration nor the district court's denial of that motion addressed fraud upon the court; therefore, we likewise did not consider or resolve any fraud issues. As this issue was not previously litigated or decided, the district court properly addressed the merits of Fallini's NRCP 60(b) motion." (Opinion, p. 6.)

In the first appeal, Defendant raised – for the first time – the allegation that

Plaintiff's counsel had violated Nevada Rules of Professional Conduct 3.1, 3.3, and 8.4 by submitting requests for admission that he allegedly knew or should have known were false (i.e., the same conduct Plaintiff now claims was fraud), and that the district court had violated the Code of Judicial Conduct. (AA IV, 0654-0676.) While not called fraud at that point, this is the same alleged misconduct that Defendant later called fraud. Although the district court specifically took judicial notice of the location of the incident, Defendant argued that Plaintiff's counsel had "allow[ed] misrepresentations to stand perpetrating misconduct of his own." (AA IV, 0667.) Defendant also asserted that the district court had "failed to uphold the 'integrity of the tribunal."' (AA IV, 0668.)

Nothing has changed since the first appeal. The factual allegations of alleged misconduct by Plaintiff's counsel are identical allegations of alleged misconduct. This Court exercised its discretion to address the issues raised by Defendant for the first time on appeal, and did so in the first appeal. *See Nichols v. Western Union Tel. Co.*, 44 Nev. 148, 191 P. 573 (1920); *Harper v. Lichtenberger*, 59 Nev. 499, 98 P.2d 1069 (1940); *Mason v. Cuisenaire*, 122 Nev. 43, 128 P.3d. 446 (2006); *Quisano v. State*, 2016 Nev. App. LEXIS 11, 368 P.3d 415 (2016).

This Court cited *Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010) in support of the proposition that for issue preclusion to apply, "the appellate court [must] actually address and decide the issue [raised] explicitly or by necessary implication." (Opinion, p. 6.) This Court cited *Five Star Capital Corp.*

v. Ruby, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) to point out that among the four factors required for issue preclusion to apply, "the issue decided in the prior litigation must be identical to the issue presented in the current action." (Opinion, p. 6.) In seeking to clarify this factor, Plaintiff directs the Court to this quote in *Five Star*: "[I]ssue preclusion may apply 'even though the causes of action are substantially different, if the same **fact** issue is presented.'" *Five Star*, 124 Nev. at 1053 (quoting *FaForge v. State, University System*, 116 Nev. 415, 997 P.2d 130 (2000) (emphasis added)).

Although this Court appears to have mistakenly concluded that the liability basis of the *default* judgment was based on Defendant's failure to respond to requests for admission, this Court addressed the propriety of sending the requests for admission, the effect of Defendant not answering them, and whether the admissions were even relevant. This Court noted that "[Defendant] was deemed to have admitted that the accident did not occur on open range, which rendered her affirmative defense under NRS 568.360(1) inapplicable." (AA IV, 0732.) This Court found two grounds upon which to uphold the judgment in the first appeal: (1) NRCP 36 and related case law, due to Defendant's failure to respond to the requests for admission, and (2) DCR 13 and related case law, due to Defendant's failure to oppose the motion for partial summary judgment. (AA IV, 733-734.) More specifically, this Court stated:

> Fallini argues that the district court erred in denying her motion for reconsideration because the partial summary judgment was based on ***false factual premises*** regarding whether the accident occurred on open range. We disagree. (AA IV, 0733-0735 (emphasis added).)

After setting forth the law regarding the use of requests for admission, the Court continued:

> Here, Fallini's argument is unpersuasive because she has not raised a new issue of fact or law. The question of whether the accident occurred on open range was expressly disputed in Fallini's answer, but she subsequently failed to challenge this issue through Adams' requests for admissions. . . . **Moreover, the fact that these admissions may ultimately be untrue is irrelevant.** Smith, 109 Nev. at 742, 856 P.2d at 1390. Finally, the district court had discretion to treat Fallini's failure to file an opposition to partial summary judgment as "an admission that the motion [was] meritorious and a consent to granting the motion." King v. Cartlidge, 121 Nev. 926, 927, 124 P.3d 1161, 1162 (2005) (citing D.C.R. 13(3)).
>
> Thus, the district court did not err in refusing to reconsider its prior orders.

(AA IV, 0733-0735 (emphasis added).)

Plaintiff respectfully submits that this Court has misapprehended or overlooked that Defendant has already raised these factual allegations in this case, and this Court has already decided them in Plaintiff's favor – including the factual basis for the alleged fraud.[6] Consequently, this Petition for Rehearing should be granted and the

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[6] Defendant has never sought relief pursuant to an exception to the law of the case doctrine. Although a court may revisit a prior ruling when (1) subsequent proceedings produce substantially new or different evidence, (2) there has been an intervening change in controlling law, or (3) the prior decision was clearly erroneous and would result in manifest injustice if enforced, *see Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 630, 173 P.3d 724, 729 (2007), Defendant did not seek relief and has not asserted facts to support this Court setting aside its prior order on this basis. Defendant has submitted no new facts, there has been no intervening change in controlling law (although the Court has sought to change

December 29, 2016 Opinion should be withdrawn.

2. The Court overlooked or misapprehended that the parties litigated the issue of fraud in a collateral proceeding

In the Opinion, this Court stated: "Neither Fallini's motion for reconsideration nor the district court's denial of that motion addressed fraud upon the court; therefore we likewise did not consider or resolve any fraud issues. As this issue was not previously litigated or decided, the district court properly addressed the merits of Fallini's NRCP 60(b) motion." (Opinion, p. 6.) Plaintiff incorporates Section B(1) above, but this Court also appears to have misapprehended or overlooked the fact that Defendant has already asserted fraud based on the same facts in a separate collateral proceeding against Plaintiff's counsel (and the district court). That Complaint was dismissed. (AA II, 0346-0355; VI, 1119-1122.) Because Defendant brought a separate suit and lost, she cannot later allege fraud in this case. *Murphy v. Murphy*, 103 Nev. 185, 734 P.2d 738 (1987) (NRCP 60(b) allows but does not require that a party file a separate action to assert fraud) (citing *Goodyear Tire & Rubber Co. V. H.K. Porter Co.*, 521 F.2d 699 (6th Cir. 1975) (party may not pursue relief based on alleged fraud under FRCP 60(b) simultaneously with filing a separate action for the same relief based on the same allegations of fraud). This was raised in Plaintiff's Opening Brief at pp. 11, 27-29.

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controlling Nevada law with the December 29, 2016 Opinion), and Defendant has not asserted facts or law regarding manifest injustice in this appeal (although Defendant has raised that issue previously) (AA III, 0568).

II. CONCLUSION

Plaintiff respectfully requests rehearing of this matter and withdrawal of the Opinion, that this Court overturn the August 6, 2014 Order granting Defendant's Motion for Relief from Judgment and all subsequent orders of the district court, including the dismissal entered on April 17, 2015, and that this Court reinstate the judgment entered on April 28, 2014, which came after the Order Affirming in Part and Remanding. (AA IV, 0732-738.)

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition for rehearing/reconsideration or answer complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] It has been prepared in a proportionally spaced typeface using WordPerfect 12 in Times New Roman 14 pt. font; or

[ ] It has been prepared in a monospaced typeface using [state name and version of word-processing program] with [state number of characters per inch and name of type style].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40 because it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 4,634 words (requiring that a petition for rehearing contain no more than 4,667 words); or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains __ words or __ lines of text; or

[ ] Does not exceed ___ pages.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of any person.

Dated this 31st day of January, 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of January, 2017, I mailed a copy of the foregoing APPELLANT'S PETITION FOR REHEARING, in a sealed envelope, to the following address and that postage was fully paid thereon:

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An employee of ALDRICH LAW FIRM, LTD.