

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

RAJWANT KAUR,

Appellant,

vs.

JASWINDER SINGH,

Respondent

No. 80090

Electronically Filed
Dec 16 2019 11:13 a.m.

Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department P
County Clark Judge Sandra Pomerenze
District Ct. Case No. 04D323977

2. Attorney filing this docketing statement:

Attorney Racheal H. Mastel, Esq. Telephone (702) 823-4900
Firm Kainen Law Group, PLLC
Address 3303 Novat St., Suite 200
Las Vegas, Nevada 89129

Client(s) Rajwant Kaur

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney F. Peter James, Esq. Telephone (702) 256-0087
Firm Law Office of F. Peter James, Esq.
Address 3821 West Charleston Blvd., #250
Las Vegas, Nevada 89102

Client(s) Jaswinder Singh

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| ☒ Judgment after bench trial | ☐ Dismissal: |
| ☐ Judgment after jury verdict | ☐ Lack of jurisdiction |
| ☐ Summary judgment | ☐ Failure to state a claim |
| ☐ Default judgment | ☐ Failure to prosecute |
| ☒ Grant/Denial of NRCP 60(b) relief | ☐ Other (specify): _____ |
| ☐ Grant/Denial of injunction | ☒ Divorce Decree: |
| ☐ Grant/Denial of declaratory relief | ☐ Original ☒ Modification |
| ☐ Review of agency determination | ☐ Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Petition for Writ of Mandamus, Jaswinder Singh, Petitioner v. Eighth Judicial Dist. Ct. of the State of NV in and for the County of Clark; and the Honorable Sandra L. Pomrenze, Dist. Judge, Respondents; and Rajwant Kaur, Real Party in Interest. No. 79591-COA

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Rajwant Kaur, Petitioner v. Jaswinder Singh, Respondent, 18STFL05676, Superior Court of California, County of Los Angeles; ongoing.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Appellant filed an action to set aside the Decree of Divorce filed in Nevada in 2004 on the basis that the same was entered fraudulently. A trial was held in the District Court on the 12th and 13th of September, 2019. The District Court found, based on the evidence presented at trial, that Respondent's Nevada residency claim was fraudulent. Despite that fact, the District Court denied the Motion to Set Aside, on the basis that the case of Vaile v. Eighth Judicial District Court, 118 Nev. 262, 44 P.3d 512 (2002), was the controlling case law.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the Court erred in denying the Motion to Set Aside the Decree of Divorce;

Whether the Court erred in finding that Vaile v. Eighth Judicial District Court, 118 Nev. 262, 44 P.3d 512 (2002), was applicable to the facts of this case; and

Whether Vaile v. Eighth Judicial District Court, 118 Nev. 262, 44 P.3d 512 (2002), creates an inequitable result under the facts of this case.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

n/a

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☒ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: The question at issue is what constitutes a fraud for the purposes of setting aside a Decree of Divorce; and whether Vaile v. Eighth Judicial District Court, 118 Nev. 262, 44 P.3d 512 (2002), is either distinguishable or creates an inequitable result.

13. Trial. If this action proceeded to trial, how many days did the trial last? 2

Was it a bench or jury trial? Bench

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from 10/22/2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served Oct 22, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed 11/19/2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
11/29/19 - Jaswinder Singh - Cross Appeal

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|---------------------------------------|
| ☒ NRAP 3A(b)(1) | ☐ NRS 38.205 |
| ☐ NRAP 3A(b)(2) | ☐ NRS 233B.150 |
| ☐ NRAP 3A(b)(3) | ☐ NRS 703.376 |
| ☒ Other (specify) <u>NRAP 3A(b)(8)</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The Order being appealed is an a final judgment entered by the District Court after a trial. The trial was set to determine if a Motion to Set Aside the initial Decree of Divorce would be granted. The Motion to Set Aside the Decree was denied after the trial.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Rajwant Kaur
Jaswinder Singh

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

n/a

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Rajwant Kaur - Request to Set Aside Divorce Decree on basis of Fraud

Jaswinder Singh - Uphold the prior entered Decree of Divorce.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Rajwant Kaur

Name of appellant

Racheal H. Mastel, Esq.

Name of counsel of record

12-16-19

Date


Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the _____ day of _____, _____, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

F. PETER JAMES, ESQ.
8321 W. CHARLESTON BLVD., SUITE 250
LAS VEGAS, NEVADA 89102

Dated this

16TH

day of

DECEMBER

, 2019

Signature



80

152.00

1 PSDD
2 (Your name) Jaswinder Singh
3 (Address) 2916 Jansen Ave
4 Las Vegas NV 89101
5 (Telephone) (702)281-2373

6 In Proper Person

FILED

AUG 27 3 33 PM '04

Shelby L. Rungione
CLERK

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 In the Matter of the
11 Joint Petition of

CASE NO.

D323977

12 (Name) Jaswinder Singh
13 and (Name) Rajwant Kaur

DEPT. NO.:

K

14 Petitioners.
15

16 **JOINT PETITION FOR SUMMARY DECREE OF DIVORCE**

17 Petitioners, Jaswinder Singh and Rajwant Kaur hereby petition this
18 Court, pursuant to the terms of Chapter 125 of the Nevada Revised Statutes, to grant them a
19 divorce. Petitioners respectfully show, and under oath, state to the Court as follows:

20 1. That Petitioner, Jaswinder Singh, is now, and for more than six
21 weeks preceding the commencement of this action has been, an actual, bona fide resident of the
22 County of Clark, State of Nevada, and during all said period of time has been actually, physically
23 and corporeally present, residing and domiciled in the State of Nevada.

24 2. That the Petitioners are incompatible in marriage.

25 3. That the Petitioners have no minor children who are the issue of this marriage, have
26 no adopted minor children, and Petitioner Rajwant Kaur is not now pregnant.

1 WHEREFORE, Petitioners pray that the Court enter a Decree of Divorce restoring them to
2 the status of single, unmarried persons.

3
4 DATED this (day) 27 day of
5 (month) August, (year) 2004.

DATED this (day) 27 day of
(month) August, (year) 2004.

6
7 Jaswinder Singh
8 (Your Signature)
9 Petitioner

Rejwanti Kaur
(Spouse's Signature)
Petitioner

10
11 **VERIFICATION**

12 STATE OF NEVADA }
13 COUNTY OF CLARK } ss:
14

15 Jaswinder Singh, under penalties of perjury, being first duly sworn, deposes
16 and says:

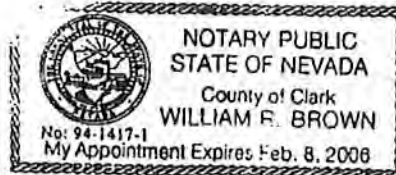
17 That I am the Petitioner in the above-entitled action; that I have read the foregoing Joint
18 Petition for Summary Decree of Divorce and know the contents thereof; that the same is true of
19 my own knowledge, except for those matters therein contained stated upon information and belief,
20 and as to those matters, I believe them to be true.

21 DATED this 27 day of (month) Aug, (year) 2004.

22 By:
23 (Your signature) Jaswinder Singh
24 Jaswinder Singh

25 SUBSCRIBED and SWORN to before
me this 27 day of
26 (month) Aug, (year) 2004.

27 William A. Brown
NOTARY PUBLIC



1 **ACKNOWLEDGMENT**

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

4 On this 27 day of (month) August, (year) 2004, before me, the undersigned
5 Notary Public in and for the said County and State, personally appeared Jaswinder Singh,
6 known to me to be the person described in and who executed the foregoing Joint Petition for
7 Summary Decree of Divorce, and who acknowledged to me that (check one) [x] he/ [] she did
8 so freely and voluntarily and for the uses and purposes therein mentioned.

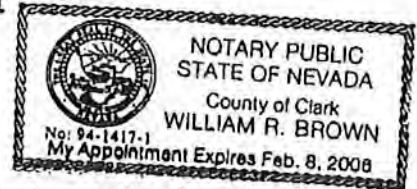
9 WITNESS my hand and official seal.

10 William R. Brown

11 NOTARY PUBLIC

12 **VERIFICATION**

13 STATE OF NEVADA }
14 COUNTY OF CLARK } ss:



15 Rajwant Kaur, under penalties of perjury, being first duly sworn, deposes
16 and says:

17 That I am the Petitioner in the above-entitled action; that I have read the foregoing Joint
18 Petition for Summary Decree of Divorce and know the contents thereof; that the same is true of
19 my own knowledge, except for those matters therein contained stated upon information and belief,
20 and as to those matters, I believe them to be true.

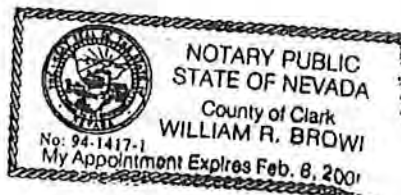
21 DATED this 27 day of (month) Aug., (year) 2004.

22 By:

23 (Spouse's signature) Rajwant Kaur
24 Rajwant Kaur

25 SUBSCRIBED and SWORN to before
me this 27 day of
(month) Aug., (year) 2004.

26 William R. Brown
27 NOTARY PUBLIC



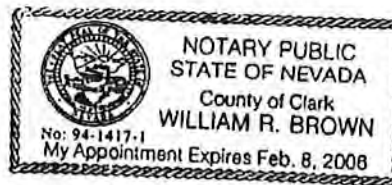
ACKNOWLEDGMENT

STATE OF NEVADA }
COUNTY OF CLARK } ss:

On this 27 day of (month) August, (year) 2004, before me, the undersigned
Notary Public in and for the said County and State, personally appeared Rajwant Kaur,
known to me to be the person described in and who executed the foregoing Joint Petition for
Summary Decree of Divorce, and who acknowledged to me that (check one) [] he/ [x] she did
so freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

William R. Brown
NOTARY PUBLIC



1 DECD
 (Your name) Jaswinder Singh
 2
 (Address) 2916 Jansen Ave
 3 Las Vegas NV 89101
 4
 (Telephone) (702)281-2373
 5 In Proper Person
 6

FILED

SEP 8 8 42 AM '04

Shelly B. Ransing
 CLERK

7 DISTRICT COURT
 8 CLARK COUNTY, NEVADA

9 In the Matter of the
 10 Joint Petition of

CASE NO.: 0323977

11 (Name) Jaswinder Singh
 12 and (Name) Rajwant Kaur
 13 Petitioners.
 14

DEPT. NO.: K

15
 16 DECREE OF DIVORCE

17 The above-entitled cause having been submitted to the above-entitled Court for decision
 18 pursuant to Chapter 125 of the Nevada Revised Statutes, and based upon the Joint Petition by
 19 Petitioner Jaswinder Singh and Petitioner Rajwant Kaur,
 20 and all of the papers and pleadings on file, finds as follows:

- 21 1. That all of the allegations contained in the documents on file are true;
 22 2. That all of the requirements of NRS 125.181 and NRS 125.182 have been met;
 23 3. That this Court has complete jurisdiction as to the parties and the subject matter
 24 thereto;
 25 4. That Petitioner Jaswinder Singh has been and is now an actual
 26 bona fide resident Clark County, Nevada, and has actually been domiciled in Clark County for
 27

1 more than six (6) weeks immediately prior to the commencement of this action;

2 5. That the parties were married on (date of wedding) Nov. 11, 1989 in (city
3 and state) Punjab, India;

4 6. That the parties are incompatible in marriage and are entitled to a Decree of
5 Divorce on the grounds of incompatibility;

6 7. That there are no minor children the issue of this marriage;

7 8. That there are no minor children adopted by the parties;

8 9. That Petitioner Rajwant Kaur is not now pregnant;

9 10. That there is no community property for the Court to divide;

10 11. That there is no community debt for the Court to divide;

11 12. (CHECK ONLY ONE BOX)

12 ☐ That Petitioner _____ does not desire to have her
13 former or maiden name restored.

14 OR

15 ☐ That Petitioner _____ requests that her former or
16 maiden name of _____ be restored.

17 OR

18 ☒ That Petitioner Rajwant Kaur never changed her name, and
19 therefore does not request restoration of a former or maiden name.

20 13. That both parties have waived any right to spousal support;

21 14. That the parties waive their rights to written Notice of Entry of Decree of Divorce,
22 to appeal, to Findings of Fact and Conclusions of Law, and to move for a new trial;

23 Therefore, **IT IS ORDERED, ADJUDGED AND DECREED** that the bonds of matrimony
24 now and heretofore existing between the Petitioners are hereby wholly dissolved, set aside and forever
25 held for naught, and an absolute Decree of Divorce is hereby granted to the parties, and each of the
26 parties are hereby restored to the status of a single, unmarried person.

27 ///

4 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that both parties are required
5 to provide their social security numbers on a separate form to the Court and to the Welfare Division
6 of the Department of Human Resources pursuant to NRS 125.130. Such information shall be
7 maintained by the Clerk in a confidential manner and not part of the public record.

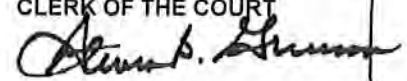
1 || Respectfully Submitted:

DISTRICT COURT JUDGE

Petitioner in Proper Person

(Telephone) (818)895-7302

l. III



1 MTN
2 Andrew L. Kynaston, Esq.
3 Nevada Bar No. 8147
4 KAINEN LAW GROUP, PLLC
5 3303 Novat Street, Suite 200
6 Las Vegas, Nevada 89129
7 Telephone: (702) 823-4900
8 Facsimile: (702) 823-4488
9 service@KainenLawGroup.com
10 Attorneys for Defendant

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

10 JASWINDER SINGH,

11 Plaintiff,

12 vs.

14 RAJWANT KAUR,

15 Defendant.

CASE NO: 04D323977
DEPT NO: P

Date of Hearing: February 13, 2019
Time of Hearing: 10:00 AM

ORAL ARGUMENT REQUESTED:

YES: XX NO:

17
18 **NOTICE: PURSUANT TO EDCR 5.25(b) YOU ARE REQUIRED TO FILE**
19 **A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE**
20 **COURT AND TO PROVIDE THE UNDER-SIGNED WITH A COPY OF YOUR**
21 **RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION.**
22 **FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE**
23 **COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY**
24 **RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT**
25 **WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.**

23 **DEFENDANT'S MOTION TO SET ASIDE DECREE OF DIVORCE**

24 COMES NOW, Defendant, RAJWANT KAUR, (hereinafter "Defendant")
25 by and through her attorney, ANDREW L. KYNASTON, ESQ., of the law firm of
26 KAINEN LAW GROUP, PLLC, and moves this Court for the following relief:
27 1. For the Court to set aside the Decree of Divorce filed September 8, 2004,
28 pursuant to NRCP Rule 60(b) and NRS 125.184(2);
...

2. For such other and further relief as the Court deems just and proper in the premises.

This Motion is made and based upon the papers and pleadings on file herein, the Points and Authorities submitted herewith, Defendant's Declaration attached hereto, and oral argument of counsel at the time of the hearing of this matter.

DATED this 4th day of January, 2019.

KAINEN LAW GROUP, PLLC

By: 

ANDREW L. KYNASTON, ESQ.

Nevada Bar No. 8147

3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

Attorneys for Defendant

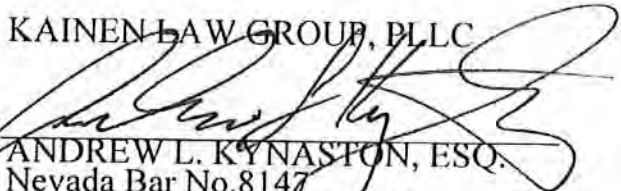
NOTICE OF MOTION

TO: JASWINDER SINGH, Plaintiff in proper person:

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled Court on the following setting or as soon thereafter as the same may be heard: February 13, 2019 at 10:00 AM

DATED this 4th day of January, 2019.

KAINEN LAW GROUP, PLLC

By: 

ANDREW L. KYNASTON, ESQ.

Nevada Bar No. 8147

3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

Attorneys for Defendant

I.

POINTS AND AUTHORITIES

NRCPC Rule 60(b) states:

Mistake; Inadvertance; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) *fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party*; (4) *the judgment is void*; or (5) the judgment has been satisfied, released, or discharged, or a prior judgment, upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that an injunction should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 6 months after the proceeding was taken or the date that written notice of entry of the judgment or order was served. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. *This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.* Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by independent action. (Emphasis added)

NRS 125.020 provides:

1. Divorce from the bonds of matrimony may be obtained for the causes provided in NRS 125.010, by verified complaint to the district court of any county:
 - (a) In which the cause thereof accrued;
 - (b) In which the defendant resides or may be found;
 - (c) In which the plaintiff resides;
 - (d) In which the parties last cohabited; or
 - (e) If plaintiff resided 6 weeks in the State before suit was brought.
2. Unless the cause of action accrued within the county while the plaintiff and defendant were actually domiciled therein, *no court has jurisdiction to grant a divorce unless either the plaintiff or defendant has been resident of the State for a period of not less than 6 weeks preceding the commencement of the action.* (Emphasis added)

NRS 125.184(2) states:

A final judgment entered pursuant to this section does not prejudice or bar the rights of either of the parties to institute an action *to set aside the final judgment for fraud, duress, accident, mistake or other grounds recognized at law or in equity.* (Emphasis added)

II.

EDCR 5.501 STATEMENT

A divorce action between the above-captioned parties is presently already pending in the Superior Court of California, County of Los Angeles (Case No. 18STFL05676). Defendant filed a *Petition for Dissolution of Marriage* on May 7, 2018, in Los Angeles County. (**Exhibit A** in Appendix of Exhibits). The Plaintiff then prepared and filed his *Response and Request for Dissolution of Marriage*. (**Exhibit B** in the Appendix of Exhibits). Both parties are represented by legal counsel in the pending California Dissolution action.

In November 2018, the Plaintiff sought to amend his Response to indicate that the parties' marriage was already dissolved in Nevada in November 2004. (**Exhibit C** in the Appendix of Exhibits). This has necessitated the filing of this Motion seeking to set aside the improperly obtained Decree of Divorce in this action pursuant to NRCP 60(b) due to fraud, misrepresentation, and misconduct by the Plaintiff which led to the entry of an improperly obtained Decree of Divorce, when the Court was without jurisdiction to do so. This has necessitated the filing of this Motion, as it is highly doubtful that any efforts to resolve this would be successful with a matter already pending in California, requiring the timely resolution of the subject matter of this Motion.

III.

STATEMENT OF FACTS

Defendant, RAJWANT KAUR (hereinafter "Wife"), and Plaintiff, JASWINDER SINGH (hereinafter "Husband"), were married more than 29 years ago on November 11, 1989, in Punjab, India. They later moved to California, where they have resided as husband and wife since that time. The parties never resided in Nevada.

The parties' marriage relationship was very traditionally Indian, with Husband having almost complete control over Wife, who was required to be wholly submissive in every aspect of their lives. His rule was law and she was essentially his property, and she had no recourse other than to comply with all of his demands. In the

1 summer of 2004, Husband informed Wife that he was going to divorce her so that he
2 could take her back home to India, where he intended to force her to marry his brother
3 in order to allow his brother to immigrate to the United States. She had absolutely no say
4 in the matter due to Husband's domineering and abusive behaviors.

5 On August 27, 2004, the parties drove from California to Las Vegas (there
6 and back on the same day) where he forced her to sign a Joint Petition for Summary
7 Decree of Divorce. (**Exhibit D** in the Appendix of Exhibits). The generic joint petition,
8 and resulting Decree of Divorce (**Exhibit E** in the Appendix of Exhibits), make no
9 provision for any property or debt allocation, no spousal support, or any other substantive
10 provision which would typically be part of a legitimate divorce action. Additionally, the
11 physical address of residency used by Husband for the Joint Petition was the same
12 physical mailing address of his "resident witness" who executed the Affidavit of Resident
13 Witness filed in the action (**Exhibit F** in the Appendix of Exhibits). Neither Husband nor
14 Wife ever actually resided at that residence, even for one night, let alone the alleged six
15 weeks Husband claims to have lived there. The resident witness, a person named
16 Balbinder Singh Pabla, claimed to have first seen Husband in Clark County, Nevada
17 almost exactly six weeks to the day prior to the day the Petition was executed and filed.
18 This would be impossible, as Husband was with Wife in California during that entire
19 period.

20 Immediately upon signing the Petition, the parties returned to their home in
21 California and continued to live together as husband and wife until the currently pending
22 California Divorce action was initiated by Wife in May of this year. There was a trip to
23 India, where Husband forced Wife to marry his brother, which marriage was later
24 dissolved in India (an incident also involving fraud and bribing of officials in India). It
25 is clear that Husband knew the Nevada divorce was a sham, as he initially responded to
26 the divorce action filed by Wife, by himself countersuing for her divorce as well. It was
27 only several months after the divorce litigation in California was underway, that he later
28 asserted that there was already a valid divorce in Nevada that should be recognized by the

1 California Court. Husband is also now trying to argue in the California case that the
2 parties' date of separation was in July 2004, rather than the much more recent actually
3 separation. Based upon California community property laws such a dramatic change to
4 the date of separation will make a significant difference in the determination of
5 community property. It is therefore critical that the Nevada Decree be set aside and/or
6 declared void, to prevent a significant miscarriage of justice by blocking Wife from many
7 years of accumulated community property.

8 IV.

9 ARGUMENT

10 NRCP Rule 60(b), authorizes the Court to set aside an order or judgment if
11 it is determined that it was obtained by "fraud (whether heretofore denominated intrinsic
12 or extrinsic), misrepresentation or other misconduct of an adverse party." NRS
13 125.184(2), further confirms that either party has the right to seek to set aside a final
14 judgment through instituting "an action to set aside the final judgment for fraud, duress,
15 accident, mistake or other grounds recognized at law or equity."

16 As set forth in the Statement of Facts above, Wife was forced by Husband,
17 under extreme duress, to sign the joint petition for divorce, which Husband then filed, and
18 used (along with other false pleadings) to obtain a fraudulent Nevada Decree of Divorce
19 in September 2004. There clear evidence of fraud upon the Court in the manner that
20 Husband obtained a Decree of Divorce in Nevada. Accordingly, there is a clear basis for
21 this Court to set aside the improperly obtained Decree of Divorce entered in September
22 2004.

23 Additionally, the Decree of Divorce should be set aside and declared void
24 due to the fact that the Nevada Court did not have jurisdiction to enter the Decree at the
25 time it was entered. Husband fraudulently presented false and unsupportable information
26 to the Court claiming to have satisfied Nevada residency requirements, when he clearly
27 did not meet the requirements. Husband blatantly forum shopped for the quickest way
28 to get a divorce, then repeatedly lied in the written pleadings and forced Wife to sign

1 them under duress and against her will.

2 Nevada law regarding residency and jurisdiction for divorce is clear. NRS
3 125.020(2) provides in relevant part that "no court has jurisdiction to grant a divorce
4 unless either the plaintiff or defendant has been a resident of the state for a period of not
5 less than 6 weeks." In this case, neither party meets the requisite residency requirements.
6 Wife was certainly not in Nevada for the six weeks prior to Husband filing the joint
7 petition, having spent only part of a day in Las Vegas, when Husband brought her to
8 Nevada to sign the Petition. Husband was also not a Nevada resident at that time or at
9 any time subsequent. He has never lived in Nevada or at the address listed on his
10 fraudulent paperwork or in the Affidavit of Resident Witness filed in the case.

11 Furthermore, established law in Nevada regarding jurisdiction makes it clear
12 that merely being actually present in the state for the requisite time period is insufficient
13 to establish residency, even if Husband could (which he can't) convince the Court that he
14 did physically reside in Nevada for six weeks before filing the joint petition. Under
15 Nevada case law, residency consists of *two* elements: (1) *Physical Presence* and (2) *Intent*
16 to make the place a home. Latterner v. Latterner, 51 Nev. 285, 274 P. 194, 195 (1929).
17 The legal residence of a person

18 . . . is that place where he or she shall have been actually,
19 physically and corporeally present within the state or county,
20 as the case may be, during all of the period for which residency
21 is claimed by him or her; provided, however, should any
22 person have sent himself from the jurisdiction of his residence
with the intention of good faith to return without delay and
continue his residence, the time of such absence shall not be
considered in determining the fact of such residence.

23 Stats. 1911, c. 158. (1911 Act defining what shall constitute legal residency in the State
24 of Nevada.)

25 Therefore, "intent," pursuant to the statute, is the intent to make the place
26 (i.e., Nevada) a home. Encompassed in that intent is the notion that if the party leaves the
27 state at any time during the claimed residency period, he/she must also have the intent to
28 return without delay. "Without delay," has been interpreted to mean that there is not an

1 absence from the state for an "indefinite or wholly uncertain period." See, Fleming v.
2 Fleming, 36 Nev. 135, 134 P.2d 445 (1913). Husband was physically present in the State
3 of Nevada for less than one day, when he dragged Wife here and forced her to sign the
4 joint petition for divorce. He has not returned "without delay" to Nevada, but continued
5 to live with Wife in the marital residence in California for the next 14 years.

6 In McLaughlin v. McLaughlin, 48 Nev. 153, 238 P. 402 (1925), the Court
7 stated that, "the best evidence of intention is to be ascertained from the party's (sic)
8 declarations;" however, such "evidence of expressed intent has no controlling weight if
9 such intent is inconsistent with the acts and general conduct of the person." The Court in
10 McLaughlin specifically stated that "with respect to the evidence necessary to establish
11 domiciliary intention, it is impossible to lay down any positive rule" as "each case must
12 vary in its circumstances . . . " Id. at 404. However, the Court in Aldabe v. Aldabe, 84
13 Nev. 392, 441 P.2d 691 (1968), set forth a number of factors relied upon in establishing
14 that there was, in fact, domiciliary intent. These factors include such things as: (1)
15 mailing address; (2) voter registration; (3) school attendance; (4) medical care; (5)
16 business and financial affairs; (6) automobile and operators' licenses; (7) taxes; (8) wills;
17 (9) employment; (10) daily activities; and (11) corroborating testimony of witnesses. Id.
18 at 694. No such indicia of residency existed at the time that Husband filed the joint
19 petition, and Wife is confident that he would be unable to produce any such evidence to
20 the Court to establish a domiciliary intent. In short, neither party was ever a resident of
21 Nevada and no evidence would support a claim of physical presence or domiciliary intent
22 as required by Nevada law. The Decree of Divorce is therefore invalid, as the Nevada
23 Court lacked jurisdiction to enter it.

24 Although it has now been more than 14 years since the fraudulent Decree
25 of Divorce was filed with the Court, the passage of time cannot make what was clearly
26 an invalid Decree, valid and enforceable to the detriment of the victim of the fraud.
27 Defendant has made every reasonable effort to bring this Motion to Set Aside in
28 reasonable time. Based upon Husband's behaviors and the fact that the parties continued

1 to reside together and hold themselves out as husband and wife, Wife did not believe that
2 the Nevada Decree was valid or still relevant. Until several months into the pending
3 California divorce action, it was never again mentioned by Husband. He never told Wife
4 that he believed that they were divorced. Furthermore, Husband continued to be
5 domineering in the parties' relationship. Wife was afraid to go against anything he
6 demanded or to question anything he did.

7 Under the facts of this case, there is also likely a significant argument to be
8 made for sanctions and attorney's fees. However, as Wife is mindful that this Court does
9 not have jurisdiction over the substantive issues in this case, and she does not wish to
10 subject herself to the personal jurisdiction of the Court, she will attempt to see appropriate
11 redresses from the California court in the already pending divorce case.

12 V.

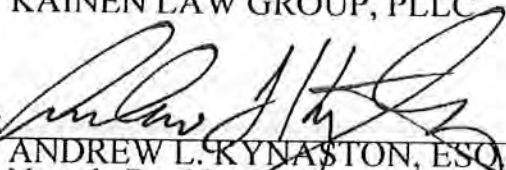
13 CONCLUSION

14 Based on the forgoing, Defendant requests the following relief:

- 15 1. For the Court to set aside the Decree of Divorce filed September 8, 2004,
16 pursuant to NRCP Rule 60(b) and NRS 125.184(2);
17 2. For such other and further relief as the Court deems just and proper in the
18 premises.

19 DATED this 4th day of January, 2019.

20 KAINEN LAW GROUP, PLLC

21
22 By: 

23 ANDREW L. KYNASTON, ESQ.
24 Nevada Bar No. 8147
25 3303 Novat Street, Suite 200
26 Las Vegas, Nevada 89129
27 Attorneys for Defendant
28

DECLARATION OF RAJWANT KAUR IN SUPPORT OF MOTION

I, RAJWANT KAUR, declare under penalty of perjury that I am the Defendant herein and that I have read the foregoing *Motion* and the same is true and correct of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

EXECUTED this 4th day of ~~December, 2018~~ January 2019
R. K.

Rajwant Kaur
RAJWANT KAUR

1 **OPPC**
2 LAW OFFICES OF F. PETER JAMES, ESQ.
3 F. Peter James, Esq.
4 Nevada Bar No. 10091
5 3821 West Charleston Boulevard, Suite 250
6 Las Vegas, Nevada 89102
7 Peter@PeterJamesLaw.com
8 702-256-0087
9 702-256-0145 (fax)
10 Counsel for Plaintiff

E-SERVED

JAN 23 2019

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

13 JASWINDER SINGH,
14
15 Plaintiff,

CASE NO. : 04D323977
DEPT. NO. : P

16 vs.

**OPPOSITION TO MOTION TO
SET ASIDE DECREE OF
DIVORCE; COUNTERMOTION**

17 RAJWANT KAUR,
18
19 Defendant.

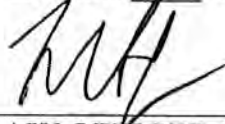
Hearing Date: February 13, 2019
Hearing Time: 10:00 a.m.
Oral Argument: YES

20 **NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO
THIS MOTION WITH THE CLERK OF THE COURT AND TO
PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE
WITHIN 10 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE
TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT
WITHIN 10 DAYS OF YOUR RECEIPT OF THIS MOTION MAY
RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE
COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED
HEARING DATE.**

1 COMES NOW Plaintiff, Jaswinder Singh, by and through his counsel, F.
2 Peter James, Esq., who hereby opposes Defendant's Motion to Set Aside and
3 Countermoves this Honorable Court for attorney's fees and costs.

4 This Opposition / Countermotion is made and based on the papers and
5 pleadings on file herein, the attached points and authorities, the attached
6 affidavit(s) / declaration(s), the filed exhibit(s), and upon any oral argument the
7 Court will entertain.

8 Dated this 23 day of January, 2019

9 

10 LAW OFFICES OF F. PETER JAMES
11 F. Peter James, Esq.
12 Nevada Bar No. 10091
13 3821 W. Charleston Blvd., Suite 250
14 Las Vegas, Nevada 89102
15 702-256-0087
16 Counsel for Plaintiff

17 ///

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1 the sole basis of the request to set aside. (*See e.g.* Motion filed January 7, 2019
2 at 4:24, 5:13-15). Defendant offers nothing but her word in support of the
3 allegation that Plaintiff never resided in Nevada. (*See generally* Motion and
4 Exhibits thereto, filed January 4, 2019).¹

5 Plaintiff now opposes the Motion.

6 II.

7 DISCUSSION

8 The Court should deny Defendant's Motion to Set Aside the Decree of
9 Divorce. The Court should award Plaintiff attorney's fees and costs for having
10 to defend against this frivolous motion.

11 A. THE COURT SHOULD DENY DEFENDANT'S MOTION TO SET 12 ASIDE

13 The Court should outright deny Defendant's Motion to Set Aside. There
14 are numerous bases which mandate denial of the motion.

15 ///

16 ///

18 ¹ Defendant also asserts that Plaintiff forced her to sign the Joint Petition and the Decree,
19 as well as to marry his brother after their divorce was finalized. (*See e.g.* Mot. at 4:25 – 5:4).
20 This assertion is both ridiculous and unsupported. Plaintiff re-asserts that he was a bona fide
Nevada resident at the times relevant to the divorce.

1 **Time Barred and Laches**

2 The request to set aside is time barred. NRCP 60(b) provides six months
3 from entry of a final order to request a set aside for fraud, mistake (and its
4 counterparts), and for discovery of new evidence. All motions under Rule 60(b)
5 must be made in a reasonable time. *See* NRCP 60(b)

6 Defendant alleges fraud and that the Decree is void as her bases for the
7 request to set aside. (*See* Mot. at 6). The fraud claims were barred years and
8 years ago as the six month limitations period applies. As such, the request to set
9 aside must be denied as to fraud as the same is time-barred.

10 The request to set aside for the Decree being purportedly void is subject to
11 laches / being filed within a reasonable time. *See Deal v. Baines*, 110 Nev. 509,
12 512-13, 874 P.2d 775, 777-78 (1994) (a two year wait to file a motion to set aside
13 based upon the underlying judgment being void is unreasonable).

14 Here, Defendant filed her Motion over **14 years** after the Decree was
15 entered. Under *Deal*, waiting two years with actual knowledge of the
16 proceedings was too long to wait to request a set aside based upon the underlying
17 order being purportedly void. *Deal*, 110 Nev. at 513-13, 874 P.2d at 778.
18 Specifically, *Deal* held that setting aside an order after the moving party waited
19 two years to request a set aside due to it being purportedly void was an abuse of
20 discretion. *Id.*

1 It is uncontested that Defendant had actual knowledge of the proceedings
2 and the Decree of Divorce. Defendant then admits that she then married another
3 person and later divorced him. (Mot. at 5:22-24).

4 So, Defendant's request to set aside based on fraud is time barred and has
5 been for over a decade. Defendant's request to set aside based upon the Decree
6 being purportedly void is time barred as well pursuant to *Deal*, which held that it
7 is an abuse of discretion to set aside an order when the motion to set aside was
8 filed two years after the order was entered and the moving party had actual
9 knowledge of the order.

10 Defendant glides right past this issue and presumes the fact not established.
11 Defendant briefed Nevada law on residency—though did not provide law stating
12 that a Decree entered without jurisdiction is void²—but entirely skipped even an
13 offer of proof that Plaintiff was not a Nevada resident.

14 Accordingly, the Court should outright deny the motion to set aside.

15 **Burden of Proof Not Met**

16 All time barred issues aside, Defendant has failed to meet her initial burden
17 of proof. The key allegation in Defendant's Motion is that Plaintiff purportedly
18 never lived in Nevada—and certainly not for the required time and with the intent

19
20 ² This issue is discussed herein. Under clear Nevada law, the best case scenario for Defendant is that the Decree is voidable, not void. That is the best case scenario.

1 to remain for the indefinite future. The problem with this assertion is that there
2 is nothing more than Defendant's word that Plaintiff purportedly never lived in
3 Nevada.

4 The party requesting Rule 60(b) relief has the burden of proof. *See Kahn*
5 *v. Orme*, 108 Nev. 510, 513–14, 835 P.2d 790, 793 (1992), *overruled on other*
6 *grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997).
7 Burden shifting is improper. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev.
8 657, 667 n.5, 262 P.3d 705, 713 n. 5 (2011).

9 Here, Defendant has offered nothing but her word that Plaintiff was not an
10 actual resident of Nevada at the relevant time. (*See generally* Motion and the
11 Exhibits thereto). Defendant has failed to show adequate cause / make a *prima*
12 *facie* case sufficient to warrant further proceedings. *See e.g. Rooney v. Rooney*,
13 109 Nev. 540, 853 P.2d 123 (1993).

14 To take Defendant at her word would be to then shift the burden to Plaintiff
15 to prove he was a Nevada resident, which is improper. *See Francis*, 127 Nev. at
16 667 n. 5, 262 P.3d at 713 n. 5 (burden shifting is improper). Plaintiff would have
17 to dig up records from a decade and a half ago to prove he was a Nevada resident.
18 This is fundamentally unfair to require Plaintiff to prove his innocence when
19 Defendant has the burden of proof. Defendant is making the claim, she needs to
20 prove it with more than her word—and she had to do so in her Motion, which she

1 did not do. Defendant needed to make an offer of proof as to the allegation, but
2 she did not. If Defendant claims that the records no longer exist to prove this,
3 then the laches / time barred argument has even more credence as Plaintiff will
4 have the same problem proving the fact that he was a bona fide Nevada resident
5 at the relevant time.

6 Even if it is established that Plaintiff was not a bona fide resident of the
7 State of Nevada and the Court establishes that it had no jurisdiction to enter the
8 Decree of Divorce, the Decree is not void—rather, it is voidable. When colorable
9 evidence exists that a party is a resident of Nevada sufficient for the Court to have
10 jurisdiction (such as an Affidavit of Resident Witness being on file), but the
11 residency claim was false, then the ensuing decree is not void, but rather voidable.
12 *See Vaile v. Eighth Judicial District Court*, 118 Nev. 262, 271-73, 44 P.3d 512-
13 14 (2002). Due to judicial estoppel, which is discussed herein, even if Plaintiff
14 were not a valid resident of Nevada at the relevant time, the Decree will stand
15 and not be voided. *Id.*

16 As such, the request to set aside should be denied due to a lack of adequate
17 cause as Defendant has not met her burden of proof.

18 **The In Pari Delicto Doctrine Bars Defendant Relief**

19 Notwithstanding the aforementioned issues with Defendant's Motion, the
20 *in pari delicto* doctrine bars relief for Defendant.

1 The *in pari delicto* doctrine provides that a party who has participated in
2 wrongdoing may not recover damages resulting from the wrongdoing. See
3 BLACK'S LAW DICTIONARY 806-07 (8th ed. 2004). The *in pari delicto* doctrine
4 precludes a party who has engaged in wrongdoing from recovering when they are
5 at least partially at fault. See *Official Committee v. R. F. Lafferty & Co.*, 267,
6 F.3d 340, 354 (3d Cir. 2001), cited as to this doctrine in *In re Amerco Derivative*
7 *Litigation*, 127 Nev. 196, 207 n.2, 252 P.3d 681, 689 n.2 (2011).

8 Here, Defendant admits to signing court papers that state Plaintiff was a
9 bona fide Nevada resident at the time the action was initiated. Defendant only
10 states that she was forced to do so, the argument against which is addressed
11 herein. If the Court were to believe Defendant's assertions (that Plaintiff was not
12 a bona fide Nevada resident at the time of the commencement of this action), then
13 Defendant committed perjury by swearing under oath that the facts in the Joint
14 Petition were true. This makes Defendant complicit with the purported (though
15 denied) wrongdoing by Plaintiff. Thus, the *in pari delicto* doctrine bars
16 Defendant relief.

17 **Judicial Estoppel Bars Defendant Relief**

18 Notwithstanding the aforementioned issues with Defendant's Motion,
19 judicial estoppel bars Defendant relief. Judicial estoppel is to prevent parties
20 from deliberately shifting positions to suit the requirements of another case

1 concerning the same subject matter. *See Vail*, 118 Nev. at 273, 44 P.3d at 514.

2 A party who has stated an oath in a prior proceeding that a given fact is true may
3 not be allowed to deny the same fact in a subsequent action. *Id.* The elements of
4 judicial estoppel are:

- 5 1. The same party has taken two positions;
- 6 2. The positions taken were in judicial proceedings;
- 7 3. The party was successful in asserting the first position (i.e. the court
8 adopted the first position or accepted it as true);
- 9 4. The two positions are totally inconsistent; and
- 10 5. The first position was not taken as a result of ignorance, fraud, or mistake.

11 *See Matter of Frei Irrevocable Trust Dated October 29, 1996*, 133 Nev. 8, 390
12 P.3d 646, 652 (2017).

13 Here, Defendant is taking two positions—that Plaintiff was a bona fide
14 Nevada resident and that he was not. The positions are in court proceedings, to
15 wit: the present divorce action. Defendant succeeded in the first position—the
16 Court accepted that Plaintiff was a bona fide Nevada resident and granted the
17 divorce. These positions are, by their nature, contradictory—Defendant asserts
18 both A and not A. There was no ignorance, fraud, or mistake by Defendant.
19 There was not even the allegation of such things in Defendant's Motion.
20 Defendant did allege coercion. As argued herein, Defendant is barred from

1 making such arguments. Further, Defendant has provided not even an offer of
2 proof as to her claims. Moreover and as the purported acts took place a decade
3 and a half ago, evidence on both sides (other than impeaching testimony) will be
4 a major issue.³

5 As all of the elements of judicial estoppel are met, the Court should deny
6 the request to set aside.

7 **B. THE COURT SHOULD AWARD PLAINTIFF ATTORNEY'S FEES**
8 **AND COSTS**

9 The Court should award Plaintiff attorney's fees and costs for having to
10 bring this matter before the Court. NRS 18.010 allows the Court to liberally
11 award fees when a party maintains a frivolous position. EDCR 7.60 permits an
12 award of fees when a party unnecessarily protracts the litigation.

13 Here and as stated herein, Defendant has filed a baseless motion to set
14 aside. Defendant filed the motion well after the six month deadline to file any
15 such motion. Nevada law is crystal clear that a motion to set aside on the basis
16 of a void judgment filed more than two years after knowledge of the order being
17

18 ³ Impeaching testimony alone is insufficient under *Rooney* to warrant holding an
19 evidentiary hearing. See *Rooney*, 109 Nev. at 542-43, 853 P.2d at 124-25. A fair summary of
20 the *Rooney* standard for obtaining an evidentiary hearing is that the moving party has to allege
facts sufficient to prevail if proven true and the moving party has to give an offer of proof of
more than a he said / she said.

1 entered is time barred if the moving party knew of its existence. Defendant had
2 actual knowledge of the order (the Decree), but waited almost 15 years to request
3 a set aside—more than a decade after it was time barred. Defendant also had
4 numerous other issues with her motion, as detailed herein. The motion should
5 never have been filed.

6 In determining the reasonableness of the fees to be awarded, the Court
7 must analyze the following factors:

- 8 • The qualities of the advocate: his ability, training, education, experience,
9 professional standing, and skill;
- 10 • The character of the work to be done: its difficulty, intricacy, importance,
11 the time and skill required, the responsibility imposed, and the prominence
12 and character of the parties where they affect the importance of the
13 litigation;
- 14 • The work actually performed by the lawyer: the skill, time, and attention
15 given to the work; and
- 16 • The result: whether the attorney was successful and what benefits were
17 derived.

18 *See Brunzell v. Golden State Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969);
19 *see also Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005). The
20 Court must also consider the relative income of the parties as this is a domestic

1 case. *Miller*, 121 Nev. at 623-24, 119 P.3d at 730. No one element should
2 predominate or be given undue weight. *Brunzell*, 85 Nev. at 349, 455 P.2d at 33.

3 As to the *Brunzell* factors, Counsel has successfully litigated countless
4 cases in the Family Division of this district court. Counsel has successfully
5 litigated numerous appeals and writ petitions at the Nevada Supreme Court.
6 Numerous Family Court judges have confirmed that Counsel's legal acumen
7 warranted charging \$400 per hour—with none disagreeing. Counsel is in his
8 thirteenth year of practice. Counsel is an AV Preeminent rated family law
9 attorney by Martindale Hubbell. In addition to numerous other accolades,
10 Counsel has been named one of the top family law attorneys in the state—and
11 received a hand-signed letter from former Sen. Harry Reid regarding the same.
12 Counsel is a court-approved Settlement Master whom the Family Courts appoints
13 cases for him to mediate on a pro bono basis. All of the substantive work in this
14 matter was performed by Counsel, not any junior associate or paralegal. What
15 work was done by a paralegal was billed at a lower rate and supervised / amended
16 by Counsel. The legal work did require review of the complex factual history
17 and of several key Nevada cases as to the issues presented. To satisfy *Miller*, the
18 filed Financial Disclosure Forms should evidence their respective income. As to
19 the result, that is up to the Court; however, Plaintiff has shown numerous theories
20 under which Defendant's motion is properly denied.

Should the Court be so inclined to award Plaintiff attorney's fees, he will file a Memorandum of Fees and Costs with the redacted billing statements to comply with *Love v. Love*.

III.

CONCLUSION

Based on the foregoing, the Court should enter the following orders:

- Denying Defendant's Motion to Set Aside; and
- Awarding Plaintiff attorney's fees and costs.

Dated this 23 day of January, 2019

LAW OFFICES OF F. PETER JAMES
F. Peter James, Esq.
Nevada Bar No. 10091
3821 W. Charleston Blvd., Suite 250
Las Vegas, Nevada 89102
702-256-0087
Counsel for Plaintiff

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1. That I am the Plaintiff in the above-entitled action; and

2. That I have read the document entitled: **OPPOSITION TO**

I declare under penalty of perjury under the law of the State of Nevada that foregoing is true and correct.

Jaswinder Singh
JASWINDER SINGH

1 **CERTIFICATE OF SERVICE**

2 I certify that on this 23 day of January, 2019, I caused the above and
3 foregoing document entitled **OPPOSITION TO MOTION TO SET ASIDE**
4 **DECREE OF DIVORCE; COUNTERMOTION** to be served as follows:

5 ☒ pursuant to EDCR 8.05(A), EDCR 8.05(F), NRCP 5(b)(2)(D)
6 and Administrative Order 14-2 captioned "In the Administrative
7 Matter of Mandatory Electronic Service in the Eighth Judicial
8 District Court," by mandatory electronic service through the
9 Eighth Judicial District Court's electronic filing system;

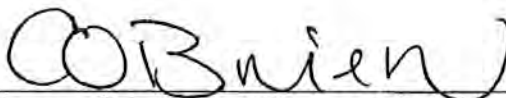
8 ☐ by placing same to be deposited for mailing in the United States
9 Mail, in a sealed envelope upon which first class postage was
10 prepaid in Las Vegas, Nevada;

10 ☐ pursuant to EDCR 7.26 / NEFCR 9, to be sent via facsimile /
11 email;

12 to the attorney(s) / party(ies) listed below at the address(es), email address(es),
13 and/or facsimile number(s) indicated below:

14 Andrew L. Kynaston, Esq.
15 Kainen Law Group
16 3303 Novat Street, Suite 200
17 Las Vegas, Nevada 89129
18 702-823-4488 (fax)
19 Service@KainenLawGroup.com
20 Counsel for Defendant

By:



An employee of the Law Offices of F. Peter James, Esq., PLLC

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JASWINDER SINGH

Plaintiff/Petitioner

v.

RAJWANT KAUR

Defendant/Respondent

Case No. 04D323977

Dept. P

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☒ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-
☒ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

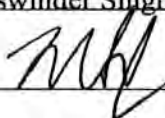
Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☐\$0 ☐\$25 ☐\$57 ☒\$82 ☐\$129 ☐\$154

Party filing Motion/Opposition: Jaswinder Singh via F. Peter James, Esq Date 1/23/2019

Signature of Party or Preparer



ORIGINAL

Electronically Filed
10/22/2019 10:51 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 **FFCL**
LAW OFFICES OF F. PETER JAMES, ESQ.
2 F. Peter James, Esq.
Nevada Bar No. 10091
3 3821 West Charleston Boulevard, Suite 250
Las Vegas, Nevada 89102
4 Peter@PeterJamesLaw.com
702-256-0087
5 702-256-0145 (fax)
Counsel for Plaintiff

6
7 **DISTRICT COURT, FAMILY DIVISION**
CLARK COUNTY, NEVADA

8 JASWINDER SINGH,
9 Plaintiff,

CASE NO. : 04D323977
DEPT. NO. : P

10 vs.

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER

11 RAJWANT KAUR,
12 Defendant.

13
14 This matter came before the Court on the 12th of September, 2019 and the
15 13th of September, 2019 for an Evidentiary Hearing on Defendant's Motion to
16 Set Aside Decree of Divorce, which was filed on January 7, 2019, and on
17 Plaintiff's Opposition thereto filed January 23, 2019. Also being heard was
18 Plaintiff's Motion in Limine, which was filed August 30, 2019, and on
19 Defendant's Opposition and Countermotion thereto, which was filed on
20 September 6, 2019. F. Peter James, Esq. appeared with Plaintiff, Jaswinder

RECEIVED

OCT 18 2019

FAMILY COURT
DEPARTMENT P

Non-Trial Dispositions:
☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start
Settled/Withdrawn:
☐ Without Judicial Conf/Hrg
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☐ By ADR
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☒ Judgment Reached by Trial
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1 Singh. Andrew L. Kynaston, Esq. appeared with Defendant, Rajwant Kaur.
2 Nevada registered Punjabi interpreter, Muir Qureshi, was also present to interpret
3 for Plaintiff and Defendant. The Honorable Sandra Pomrenze presided over the
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16 the decision regarding the fraudulent divorce, Defendant not receiving any
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10 The Court, having read the papers and pleadings on file herein, being well
11 advised in the premises, having heard the testimony, having considered the
12 evidence, being well advised in the premises, and for sufficient cause shown,
13 hereby finds and orders as follows:

14 **THE COURT HEREBY FINDS** that Plaintiff was not credible in any
15 portion of his testimony. Based on the evidence presented Defendant was more
16 credible; therefore, the Court does find that the parties perpetrated a fraud on the
17 State of Nevada by entering into a Decree of Divorce without the requisite
18 residency. Were that to be the end of the inquiry, but because of the *Vaile vs.*
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17 has to be some threat, duress, or coercion or an equitable reason why that party
18 is free from fault. In the instant case the Court finds the Defendant to be very
19 credible, unlike the Plaintiff. However, what is missing from Defendant's
20 testimony is that she was forced to sign those papers and, in fact in this instance,

1 she knew there was a divorce in Nevada whether Plaintiff told her it was a piece
2 of paper or not. This is a person who is a competent adult and who knew there
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15 it a “sham” marriage? Of course it was. Did it assist the parties in their “end
16 game”? No, because Plaintiff’s brother never got a Visa and did not come to the
17 U.S. But at the end of the day, there is simply insufficient evidence that the
18 Defendant acted under duress. So as much as the Court finds the facts of this
19 case offensive, it cannot rule on what it finds offensive—it has to rule on the law
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1 choose to take a second look on appeal, they are free to do so, and, if in fact, they
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3 back and the Court will even set a second hearing. On the testimony and the
4 evidence, the Court is compelled to grant the motion for judgment on the
5 evidence and it is compelled to deny the motion to set aside.

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7 this court with clean hands, neither party shall receive an award of attorney's fees
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9 is equally, if not greater, at fault than the Defendant, so he may be the prevailing
10 party, but the Court will not reward someone with extremely unclean hands with
11 an award of attorney's fees. The Defendant is not the prevailing party here and
12 as much as there is some sympathy here, the Court does not rule on sympathy. It
13 must rule on the law and insofar as Defendant is not the prevailing party the Court
14 cannot award her any attorney's fees either. The Court was surprised when
15 Defendant rested, but counsel did, and did not get to the heart of the *Vaile* case
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18 Defendant knew what her husband wanted her to do, and she went ahead and did
19 it. There is no evidence that she refused or that he demanded or that he threatened
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6 Decree of Divorce. Counsel need to decide what they wish to do, because the
7 Court does believe there is an issue here. This Court does not have the ability to
8 "jump over" the Supreme Court and decide.

9 Therefore,

10 **IT IS HEREBY ORDERED** that the Motion for Judgment on the
11 Evidence is GRANTED.

12 **IT IS FURTHER ORDERED** that Defendant's Motion to Set Aside the
13 Decree of Divorce is DENIED.

14 **IT IS FURTHER ORDERED** that, as neither party is the prevailing
15 party, there shall be no award of attorney's fees to either party.

16 ///

17 ///

18 ///

19 ///

20 ///

1 **IT IS FURTHER ORDERED** that Mr. James shall prepare the Findings
2 of Fact, Conclusions of Law with Mr. Kynaston to review the same and
3 countersign.

4 **IT IS SO ORDERED.**

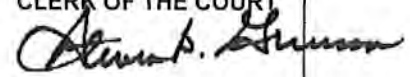
5 Dated this 21 day of October, 2019.

6
7 
DISTRICT COURT JUDGE
SANDRA L. POMRENZE

8 Respectfully submitted by:

Approved as to form and content by:

9 
10 LAW OFFICES OF F. PETER JAMES KAINEN LAW GROUP
F. Peter James, Esq. Andrew L. Kynaston, Esq.
11 Nevada Bar No. 10091 Nevada Bar No. 8147
12 3821 W. Charleston Blvd., Suite 250 3303 Novat Street, Suite 200
Las Vegas, Nevada 89102 Las Vegas, Nevada 89129
702-256-0087 702-823-4900
13 Counsel for Plaintiff Counsel for Defendant



1 **NEOJ**
LAW OFFICES OF F. PETER JAMES, ESQ.
2 F. Peter James, Esq.
Nevada Bar No. 10091
3 3821 West Charleston Boulevard, Suite 250
Las Vegas, Nevada 89102
4 Peter@PeterJamesLaw.com
702-256-0087
5 702-256-0145 (fax)
Counsel for Plaintiff

6
7 **DISTRICT COURT, FAMILY DIVISION**
CLARK COUNTY, NEVADA

8 JASWINDER SINGH,
9 Plaintiff,

10 vs.

11 RAJWANT KAUR,
12 Defendant.

CASE NO. : 04D323977
DEPT. NO. : P

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF
LAW, AND ORDER**

14 ///

15 ///

16 ///

17 ///

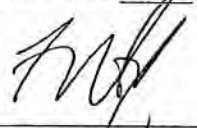
18 ///

19 ///

20 ///

1 Please take notice that the attached Findings of Fact, Conclusions of Law,
2 and Order was entered on October 22, 2019.

3 Dated this 22 day of October 2019

4 
5 LAW OFFICES OF F. PETER JAMES
6 F. Peter James, Esq.
7 Nevada Bar No. 10091
8 3821 W. Charleston Blvd., Suite 250
9 Las Vegas, Nevada 89102
10 702-256-0087
11 Counsel for Plaintiff
12
13
14
15
16
17
18
19
20

1 **CERTIFICATE OF SERVICE**

2 I certify that on this 22 day of October, 2019, I caused the above and
3 foregoing document entitled **NOTICE OF ENTRY OF FINDINGS OF FACT,**
4 **CONCLUSIONS OF LAW, AND ORDER** to be served as follows:

5 ☒ pursuant to EDCR 8.05(A), EDCR 8.05(F), NRCR 5(b)(2)(D)
6 and Administrative Order 14-2 captioned "In the Administrative
7 Matter of Mandatory Electronic Service in the Eighth Judicial
8 District Court," by mandatory electronic service through the
9 Eighth Judicial District Court's electronic filing system;

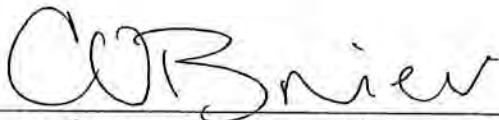
8 ☐ by placing same to be deposited for mailing in the United States
9 Mail, in a sealed envelope upon which first class postage was
10 prepaid in Las Vegas, Nevada;

10 ☐ pursuant to EDCR 7.26 / NEFCR 9, to be sent via facsimile /
11 email;

12 to the attorney(s) / party(ies) listed below at the address(es), email address(es),
13 and/or facsimile number(s) indicated below:

14 Andrew L. Kynaston, Esq.
15 Kainen Law Group
16 3303 Novat Street, Suite 200
17 Las Vegas, Nevada 89129
18 702-823-4488 (fax)
19 Service@KainenLawGroup.com
20 Counsel for Defendant

19 By:



An employee of the Law Offices of F. Peter James, Esq., PLLC

ORIGINAL

Electronically Filed
10/22/2019 10:51 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 **FFCL**

LAW OFFICES OF F. PETER JAMES, ESQ.

2 F. Peter James, Esq.

Nevada Bar No. 10091

3 3821 West Charleston Boulevard, Suite 250

Las Vegas, Nevada 89102

4 Peter@PeterJamesLaw.com

702-256-0087

5 702-256-0145 (fax)

Counsel for Plaintiff

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CLARK COUNTY, NEVADA

8 JASWINDER SINGH,

9 Plaintiff,

10 vs.

11 RAJWANT KAUR,

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CONCLUSIONS OF LAW, AND
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RECEIVED

OCT 18 2019

FAMILY COURT
DEPARTMENT P

Non-Trial Dispositions:
☐ Other
☐ Dismissed - Want of Prosecution
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☐ Default Judgment
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8 "jump over" the Supreme Court and decide.

9 Therefore,

10 **IT IS HEREBY ORDERED** that the Motion for Judgment on the
11 Evidence is GRANTED.

12 **IT IS FURTHER ORDERED** that Defendant's Motion to Set Aside the
13 Decree of Divorce is DENIED.

14 **IT IS FURTHER ORDERED** that, as neither party is the prevailing
15 party, there shall be no award of attorney's fees to either party.

16 ///

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19 ///

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1 **IT IS FURTHER ORDERED** that Mr. James shall prepare the Findings
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5 Dated this 21 day of October, 2019.

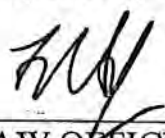


DISTRICT COURT JUDGE

SANDRA L. POMRENZE

8 Respectfully submitted by:

Approved as to form and content by:



10 LAW OFFICES OF F. PETER JAMES KAINEN LAW GROUP

F. Peter James, Esq.

Andrew L. Kynaston, Esq.

11 Nevada Bar No. 10091

Nevada Bar No. 8147

3821 W. Charleston Blvd., Suite 250

3303 Novat Street, Suite 200

12 Las Vegas, Nevada 89102

Las Vegas, Nevada 89129

702-256-0087

702-823-4900

13 Counsel for Plaintiff

Counsel for Defendant