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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
3

4 JASWINDER SINGH)

5 Appellant,)

6 vs.)

7 RAJWANT KAUR)

8 Respondent.)
9
10

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CASE NO. 83613

11 **RESPONDENT'S ANSWERING BRIEF**
12

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: None.

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court:

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3. If litigant is using a pseudonym, the litigant's true name: None.

Dated this 13 day of April, 2022.

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STATEMENT OF ISSUES

1. Substantial evidence supported the district court's findings that judicial estoppel was not applicable, because Rajwant's initial position was based on "mistake, ignorance, or fraud," thus satisfying the 5th factor of *In re Matter of Frei Irrevocable Trust*, 133 Nev. 50, 390 P.3d 646 (2017).
2. There is no basis to review the credibility of witness testimony in this matter.
3. The district court did not err in refusing to award Jaswinder attorney's fees.

STATEMENT OF THE CASE

This Appeal is taken from a decision on remand after this court's decision in *Kaur v. Singh*, 136 Nev. 653, 477 P.3d 358 (2020).

The parties were married in India in 1989. AA V1:45. They later emigrated to the United States, specifically to California, where they resided with Jaswinder's family. AA V3:411; V4:666. In August 2004, the parties traveled to Las Vegas for less than 48 hours, where they signed a Joint Petition for Divorce, as well as a Decree of Divorce. AA V3:416-417; V4:670-671. Neither document

1 was read to, or fully explained to, Rajwant. AA V3:417-418; V4:672-675. She
2 was simply directed by Jaswinder to sign and did so, as he demanded. AA
3 V3:417; V4:671, 677. A man known to Jaswinder signed the Resident Witness
4 Affidavit. AA V3:382, 414; V4:671. Almost immediately after, Rajwant and
5 Jaswinder returned to California, where they continued to reside, until 2018.
6
7
8 AAV3:420-421; V4:690-691.

9
10 In 2018, Rajwant filed for divorce in California, where the parties have
11 continuously resided for more than 20 years. AA V1:15-17. Several months into
12 the California litigation, Jaswinder amended his initial Answer to allege the
13 existence and validity of the Nevada divorce. AA V1:23-28. It was the first time
14
15 Rajwant learned what the documents said. AA V3:419; V4:680-681. Due to the
16 fact that the parties had not been residents of Nevada at any time, and the fact
17 that they had remained together for the 14 years thereafter in exactly the same
18 circumstances as they had during the 15 years of their "legal" marriage, Rajwant
19 filed a Motion to Set Aside the Decree of Divorce on the basis of fraud. AA
20
21 V1:42-51. Jaswinder opposed the same and the district court set a trial. AA
22 V1:55 -70, 151-153. After the trial, the district court specifically found that the
23 fraud was committed, that Jaswinder was not a credible witness, but that
24
25
26

1 Rajwant had not met her burden to prove duress, and that *Vaile v. Eighth Judicial*
2 *District Court*, 118 Nev. 262, 44 P.3d 512 (2002) prohibited the district court
3
4 from setting aside the Decree. **AA V4:571-574.**

5 The decision was appealed and the Supreme Court reversed and remanded
6
7 the decision for consideration of the judicial estoppel factors in *Kaur*, supra. On
8
9 remand, the case was administratively reassigned to Judge Heidi Almase. **AA**
10 **V4:611.** Judge Alamase reviewed the prior trial testimony and took limited
11
12 additional testimony. **AA V4:656-703, 705.** Jaswinder did not testify at the trial
13
14 on remand. **AA V4:658.** Thereafter, she issued her Order, finding that Rajwant
15
16 was credible (Jaswinder did not testify), that Rajwant's "initial position" on
17
18 residency (in the Joint Petition), was the result of mistake, ignorance, and fraud,
19
20 and the district court set aside the Decree. **AA V4:778-790.** Jaswinder has
21
22 appealed that decision.

23 STATEMENT OF FACTS

24 Rajwant and Jaswinder entered into an arranged marriage in Punjab, India
25
26 in 1989. **AA V1:45.** Rajwant spoke, and still speaks very little English. **AA**
V3:410; V4:666-667. Although her English has improved some over her years
of living in the United States it is still very limited. **AA V4:667-669.** Her job

1 does not require her to speak English. AA V4:669. A few years after their
2 marriage, the parties relocated to California. AA V3:409-410, 412-413.

3
4 In 2004, Jaswinder approached Rajwant and informed her that they would
5 be getting a "paper divorce." AA V3:421; V4:671. The purpose of that divorce,
6 he told her, would not change their marriage, but rather, simply allow her to enter
7 into a different marriage with his brother, so as to be the bridge by which this
8 brother would be able to come to the United States. AA V3:416-417; V4:671.

9
10 As is considered proper in a "traditional marriage," Rajwant did not question her
11 husband. AA V3:417; V4:677. She came with him to Nevada, where they stayed
12 for less than 48 hours with Jaswinder's friend, who took them to an office, where
13 Rajwant was presented with papers and told to sign. AA V3:414-415; V4:671.

14
15 She did as directed. The papers were not explained to her. AA V3:417-418;
16 V4:671-675. She was not told that she was entitled to counsel to advise her. AA
17 V4:674-675. She was not given time to review or read the papers, and could not
18 have understood them, even if she had. AA V3:417-418; V4:672-674. No one
19 translated the papers for her. AA V3:418; V4:674. Thereafter, the parties drove
20 back home to California together, where they continued to reside together for the
21 next fourteen years. AA V3:420; V4:690.

1 Thereafter, Jaswinder, his parents and Rajwant traveled back to India
2 together, where Rajwant, at Jaswinder's direction, was to marry his brother. AA
3 V3:422; V4:692. They were in India for a total of approximately three weeks,
4 before returning to California together. AA V3:423;V4:692. As it turned out,
5 Jaswinder's brother was already married and the plan to bring him to California
6 via a spousal visa was all for naught. AA V3:424-425; V4:693. Nearly
7 immediately, the purported, sham marriage in India to Jaswinder's brother was
8 terminated via divorce papers filed there. AA V3:425-426; V4:693-694.
9

10 Once back in California, the parties resumed the life they had maintained,
11 together, since 1989. AA V3:420, 423, 433; V4:690, 692. They maintained that
12 life, living together, sharing a marital bed, and co-mingling their property, until
13 2018. AA V3:420-421;V4:691. In 2018, Rajwant filed for divorce in California,
14 where the parties lived. AA V1:15-17. It was not until after Jaswinder filed his
15 *amended* Answer, six months after the California litigation began, alleging that
16 the parties were previously divorced that Rajwant had any notion that the activity
17 in Nevada, so many years before, had any legal impact on her marriage. AA
18 V1:45; V3:433; V4680-681.
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SUMMARY OF THE ARGUMENT

The first trial in this matter occurred in 2019. At that trial, the district court found that despite proving the fraud on the court, that *Vaile*, supra, required Rajwant to prove duress or coercion to set aside the Decree. The Supreme Court reversed the decision and remanded, instructing the district court to consider the judicial estoppel factors set forth in *In re Frei*, supra, before considering duress or coercion. The Supreme Court clarified that duress and coercion were defenses to judicial estoppel, which were considered only if judicial estoppel applied.

On remand, the district court took additional testimony and found that the fifth factor listed in *In re Frei*, "the first position was not taken as a result of ignorance, fraud or mistake," was not met, and therefore judicial estoppel did not apply. AA V4:788. *In re Frei*, supra at 56.

Substantial evidence from both the first trial and the second support that Rajwant's position in the Joint Petition was taken as the result of fraud and ignorance. As such, the district court correctly found that judicial estoppel did not apply, and correctly set aside the Nevada Decree of Divorce. There was no error relating to the credibility determinations made by the district court in this matter and no basis to review the same. Both the district court in the original trial, and

1 the district court on remand found Rajwant to be credible and her testimony was
2 consistent. AA V4:571-572, 574, 787. Finding certain testimony credible does not
3 "bullet proof" the case for appeal. The facts *must support* the judgment.
4 However, given the fact that the appellate court only reviews the written record,
5 and it is the district court who gets to see the witnesses testify, and take stock of
6 their demeanor, tone, and body language, there are certain aspects of credibility
7 that the appellate courts simply do not have. Where credibility can be
8 successfully challenged based on the written record, the appellate court can
9 weigh in, but where it cannot, there is no reason for the appellate courts to do so.

10 Finally, as the Court did not err in its decision, there is no basis for
11 Jaswinder to be awarded his attorney's fees in this matter.

12 ARGUMENT

13 I. The District Court Did Not Err in Finding That Rajwant's First 14 Position Was Taken as the Result of Ignorance, Fraud or Mistake.

15 A. Standard of Review

16 "Whether judicial estoppel applies is a question of law subject to de novo
17 review. The primary purpose of judicial estoppel is to protect the judiciary's
18 integrity, and a court may invoke the doctrine at its discretion. However, judicial

1 estoppel should be applied only when a party's inconsistent position arises from
2 intentional wrongdoing or an attempt to obtain an unfair advantage. Judicial
3
4 estoppel does not preclude changes in position that are not intended to sabotage
5 the judicial process." *NOLM, LLC, v. County of Clark*, 120 Nev. 736, 743, 100
6
7 P.3d 658, 663 (2004), internal citations omitted.

8 "The doctrine of judicial estoppel is an extraordinary remedy that is
9
10 invoked to protect the integrity of the justice system when a party argues two
11 conflicting positions to abuse the legal system. This court has emphasized that
12
13 the doctrine should be cautiously applied only when a party's inconsistent
14 position arises from intention wrongdoing or an attempt to obtain an unfair
15 advantage." *Delgado v. American Family Ins. Group*, 125 Nev. 564, 567, 217
16
17 P.3d 563, 570 (2009), internal citations omitted.

18
19 B. The District Court Correctly Found That Rajwant's First Position
20 Was the Result of Ignorance, Fraud or Mistake.

21 The district court correctly found that Rajwant's position was the
22
23 result of ignorance, fraud or mistake, and therefore that judicial estoppel did not
24 apply. In the first appeal between these parties, *Kaur*, supra, the Supreme Court
25
26 specifically identified that the fifth judicial estoppel factor, "that the first position

1 was not taken as a result of ignorance, fraud, or mistake," should be considered,
2 in light of the testimony about Rajwant's inability to understand the Joint Petition
3 and Decree. 136 Nev. at 658.
4

5 Whether Rajwant alleged residency as the result of ignorance, fraud, or
6 mistake, which is the central issue of this case, is a question of fact, not a
7 question of law.
8
9

10 Additionally, in *Kaur*, the Supreme Court also noted that the district court's
11 decision to hear the NRCP 60(b) Motion was proper, and upheld the district
12 court's finding that falsely alleging residency is fraud on the court. *Id.* at 655-656.
13 Jaswinder's argument, that Rajwant and the district court are relying on
14 "ignorance of the law," is a misunderstanding and a red herring.
15
16

17 The relevant testimony was not whether Rajwant was unaware that there
18 was a residency requirement for getting a divorce in Nevada. The relevant
19 testimony was that Rajwant was unaware that she was *attesting* to Jaswinder's
20 residency in Nevada. Whether Rajwant's attestation was due to ignorance,
21 mistake or fraud is an issue of *fact*. And it is that fact on which the case entire
22 case hinges.
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1 Rajwant has not alleged that she did not know there was a residency
2 requirement (although a distinction between attributing certain state specific laws
3 of a state, such as jurisdiction, to its residents but not to non-residents is logical).¹

4 Rather, Rajwant has alleged that she did not know, and could not know, that she
5
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9 The seminal case stating that there is a non-rebuttable presumption that
10 everyone knows the law is *Smith v. State*, 38 Nev. 477, 151 P. 512, a case
11 from 1915. This case has predominantly been applied to residents, and
12 corporations doing business in the state - specifically with respect to NRS
13 116.1104. There is a case dealing with a malfunctioning slot machine, in
14 which constructive notice of Nevada Gaming Commission Regulation
15 14.040(2) was applied to an individual as to a claim of lack of notice
16 regarding use of random selection process with respect to jackpots and slot
17 machines. That case is distinguishable given both general knowledge and the
18 fact that the individual had specifically availed himself of those regulations
19 intentionally and knowingly. Additionally, although a criminal case,
20 *Renteria-Novoa v. State*, 133 Nev. 75, 77-78, 391 P.3d 760, 762 (2017)
21 addresses the need for counsel in a post-conviction case, *where a language*
22 *barrier* existed and the same "may have interfered with the petitioner's ability
23 to comprehend the proceedings" as "the petitioner may be unable to
24 sufficiently present viable claims..."
25
26

1 was attesting that Jaswinder was a Nevada resident. For judicial estoppel to
2 apply, Rajwant must have taken inconsistent positions as to *facts* of the case, not
3 as to the law.
4

5 The only potential "ignorance of the law," is a question as to whether
6 Rajwant understood the legal impact of the divorce on herself. Although not
7 specifically addressed in *Kaur*, this court implicitly found that Rajwant's reliance
8 on a misunderstanding as to the impact of the divorce on her marriage was a valid
9 claim. *Kaur*, supra. More importantly, the "ignorance of the law" doctrine does
10 not where the law was misrepresented, and that misrepresentation was relied
11 upon. Rajwant's reliance on the fact that the divorce was without legal impact
12 came from Jaswinder's clear misrepresentations.²
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20 Both the original trial judge and the judge on remand found Rajwant to be a
21 credible witness, although the two trial judges did not specifically agree as to
22 whether Rajwant reasonably knew the impact of the Decree. That said,
23 additional evidence was taken by the judge on remand, which reasonably
24 could have led her to alter and amend the previous findings. *See* NRCP 59.
25
26

1 The attestation of residency by Rajwant was clearly made in ignorance and
2 based on her reliance on the fraudulent misrepresentations of Jaswinder. Fraud
3 and/or misrepresentation occurs where there is: 1) a false representation; 2) the
4 party who makes the representation knows or believes the representation is false,
5 or has an insufficient basis for making the representation; 3) the party making the
6 representation intends to induce the other party to act or refrain from acting, in
7 reliance on the representation; 4) the other party justifiably relies on the
8 representation; and 5) there are damages to the other party resulting from the
9 reliance. *Bulbman, Inc., v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592
10 (1992), quoting *Lubbe v. Barba*, 91 Nev. 596, 540 P.2d 115 (1975). The
11 testimony from both trials is clear. Jaswinder represented to Rajwant that the
12 divorce was a "paper divorce," and didn't mean anything. **AA V3:421; V4:671.**

13 At best, Jaswinder had an insufficient basis for his misrepresentation, but
14 given that he was the catalyst for the divorce it is reasonable to presume that he
15 was well aware of his misrepresentation. It was clearly Jaswinder's intention to
16 that Rajwant sign the divorce paperwork. It is evident, from Rajwant's (and
17 frankly Jaswinder's) course of conduct subsequent to the divorce, that she

1 genuinely believed the same to have no legal impact, including the continued
2 marital relationship (continuing to live as married spouses, sharing finances,
3 etc.), and her filing for divorce in California more than 14 years later. Rajwant
4 has absolutely incurred damages as the result of the misrepresentation - if the
5 Decree stands, Rajwant will have be swindled out of *all* of her community
6 property interests from the parties nearly thirty year marriage.
7
8
9

10 Rajwant did not act in ignorance of the law. Jaswinder made clear
11 misrepresentations on which Rajwant justifiably relied. Rajwant's actions were
12 based on Jaswinder's specific misrepresentations, and her own inability to
13 understand *what* she was representing to the court. It should be noted that the
14 original trial court did not make any findings as to whether Rajwant's
15 understanding of *what* the divorce meant was in any way impacted by
16 Jaswinder's representations. She merely found that Rajwant was a woman of
17 reasonable intelligence, who knew what a divorce was. **AA V4:573**. However,
18 it is apparent, and the trial court after remand determined, after taking additional
19 evidence, that Rajwant's understanding was impacted by Jaswinder's
20 representations - a determination that was appropriate for her to make. The
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1 district court correctly found that the 5th factor of judicial estoppel was not
2 applicable based on the evidence before it.
3

4 **II. There Is No Basis to Review Credibility**

5 **A. Standard of Review**

6
7 The appellate court does not reweigh credibility of witnesses on appeal;
8 "that duty rests within the trier of fact's sound discretion." *Castle v. Simmons*, 120
9 Nev. 98, 103, 86 P.3d 1042, 1046 (2004).
10

11 **B. Credibility Determinations Are in the Sound Discretion of the** 12 **District Court**

13
14 Contrary to Jaswinder's claims, the fact that this court does not reweigh
15 credibility is not a new concept. In fact, cases as far back as 1909 have
16 maintained that credibility is exclusively judged by the trial court. *See Anderson*
17 *v. Feutsch*, 31 Nev. 501, 103 P. 1012, 1016 (1909), *Curti v. Franceschi*, 60 Nev.
18 422, 111 P.2d 53 (1941), and *Douglas Spencer and Assoc., v. Las Vegas Sun,*
19 *Inc.* 84 Nev. 279, 439 P.2d 473 (1968). Additionally, the case law that Jaswinder
20 cites, *Kaur*, supra at 657, and *Ybarra v. State*, 127 Nev. 47, 247 P.3d 269 (2011),
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1 do not give any indication that an abuse of discretion standard applies to
2 credibility, merely that the same is within the trial court's discretion.
3

4 Public Policy does not support having the appellate court come behind the
5 district court to re-assess credibility based on a cold record. The ability to
6 observe "the witnesses' demeanors during an evidentiary hearing," gives the trial
7 court a unique perspective to judge credibility. *Mann v. State*, 118 Nev. 351, 356,
8 46 P.3d 1228, 1231 (2002).
9

11 Interestingly, in *Mann*, the Supreme Court remanded the case for an
12 evidentiary hearing on a single issue. The state argued against the same, noting
13 that the trial court had previously found Mann incredible. The Supreme Court
14 was unpersuaded, noting that he "may be able to bolster his claim by presenting
15 additional evidence or testimony..." *Id.* Just as anticipated in *Mann*, the trial court
16 took additional evidence from Rajwant, which it again found credible, and which
17 again supported the allegations.
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22 It should be noted that the California case cited by Jaswinder, *Kanno v.*
23 *Marwit Capital Partners II, L.P.*, 18 Cal.App.5th 987, 227 Cal.Rptr.3d 334
24 (Cal.App.4th 2017), deals specifically with conflicts of evidence or credibility
25
26

1 in contract integration questions. The same was also a jury case. Far more
2 recently, however, and *in a divorce case*, the Sixth District of California stated:
3
4 "As the trier of fact, the trial court is the sole judgement of the credibility and
5 weight of the evidence; we do not judge credibility on appeal." *In re. Marriage*
6 *of Brewster & Clevenger*, 45 Cal.App.5th 481, 499, 285 Cal.Rptr.3d 745, 763
7 (Cal.App.6th 2020). In fact, the appellate court even went further and stated,
8
9 "[a]s the judge of credibility, the trial court may reject evidence, even
10 uncontradicted evidence, as unworthy of credence."
11
12

13 Rajwant does not agree with Jaswinder's contention that the credibility of
14 a witness some how "bullet-proofs" a judgment. The judgment itself must still be
15 supported by substantial evidence. *See Savini Const. Co., v. A & K Earthmovers,*
16 *Inc.*, 88 Nev. 5, 6, 492 P.2d 125, 126 (1972); *Douglas Spencer*, *supra*; *Anderson*,
17 *supra*. In this case it is apparent that the judgement is.
18
19

20 It should be noted that Jaswinder also had an equal opportunity to present
21 new evidence, and it was his choice to not testify and merely cross-examine
22 Rajwant. The fact that Rajwant again testified in Punjabi and that there were
23 issues with the interpreter are irrelevant because there is more to credibility than
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1 simply the words one says. Further, only the district court can determine what it
2 was able to understand. if the district court didn't understand the evidence
3 presented, it could not have made findings on which to base its decision. Finally,
4 Jaswinder had the opportunity to object to the interpreter, and instead agreed to
5 allow the interpreter to continue. **AA683-687.**

8 Rajwant's testimony did not contradict the district court's findings.
9
10 Jaswinder would like this court to get stuck on the words - that she knew it was
11 a "divorce" and she knew that the purpose was for her to go to India to marry
12 Jaswinder's brother solely for immigration purposes. **AA V3:416-417; V4:671.**
14 However the evidence also made it clear that she didn't know the implications of
15 a divorce, nor did she understand the legal intricacies of how the divorce and
16 sham marriage to Jaswinder's brother could impact her marriage - especially
17 since she also testified that she was also aware that Jaswinder's brother was
18 already married. **AA V3:424-425; V4:693.**

21
22 The district court had ample evidence to support its findings and there is
23 no basis for a review of credibility. In addition, Jaswinder had his opportunity to
24 cross-examine Rajwant and seek to create doubt as to her credibility. He also had
25
26

1 every opportunity to present his own evidence which he chose not to do. The
2 strategic "safeguards" for credibility determinations were in place and utilized by
3 Jaswinder to the extent he chose, and they were sufficient.
4

5 **III. The District Court Did Not Err in Failing to Award Jaswinder**
6 **Attorney's Fees**
7

8 **A. Standard of Review**
9

10 Attorney's fees decisions are generally reviewed for " a manifest
11 abuse of discretion." *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d
12 1057, 1063 (2006), quoting *Frantz v. Johnson*, 116 Nev. 455, 471, 999 P.2d 351,
13 361 (2000). However, "Nevada follows the American rule that attorney's fees
14 may not be awarded absent a statute, rule, or contract authorizing such award."
15
16
17 *Id.*
18

19 **B. There Is No Basis to Award Jaswinder Fees**
20

21 Jaswinder did not prevail in the district court case. There is no basis
22 for him to prevail on this appeal. Therefore, there is no basis to award Jaswinder
23 fees. He has not cited to any other statute or rule which would have allowed him
24 to be awarded fees, merely his belief that he should have been the prevailing
25
26

1 party. But as he was not, there is no basis under Nevada law for overturning the
2 district court's Order denying Jaswinder fees.
3

4 **CONCLUSION**

5 Based on the foregoing, Rajwant respectfully requests that judgment of the
6 district court be affirmed.
7

8 By: 

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10 Nevada Bar No. 11646
11 Attorney for Respondent
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CERTIFICATE OF COMPLIANCE

1
2
3 1. I hereby certify that this appellate brief complies with the formatting
4 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5)
5 and the type style requirements of NRAP 32(a)(6) because this appellate brief has
6 been prepared in a proportionally spaced typeface using Word Perfect X5 in 14-
7 point Times New Roman style;
8
9

10 2. I further certify that this appellate brief complies with the page- or
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14
15

16 3. Finally, I hereby certify that I have read this appellate brief, and to the
17 best of my knowledge, information and belief, it is not frivolous or interposed for
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19 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which
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21 supported by appropriate references to page and volume number, if any, of the
22 transcript or appendix where the matter relied upon is to be found. I understand
23 that I may be subject to sanctions in the event that the accompanying brief is not
24
25
26

1 in conformity with the requirements of the Nevada Rules of Appellate
2 Procedure.
3

4 Dated this 13 day of April, 2021.

5
6
7 By: 

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I HEREBY CERTIFY that on the 13th day of April, 2021, I caused
to be served the ***Respondent's Answering Brief*** to all interested parties as follows:

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